SUPREME COURT OF THE UNITED STATES.

No. 244.

THE CITY OF SAN ANTONIO, PLAINTIFF IN ERROR,

vs.

THOMAS J. MEHAFFY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

INDEX.

	Original.	Print.
Writ of error	a	1
Citation and service	b	1
Petition	1	2
Of citation and return	11	8
Pleas of defendant and notice to plaintiff	11	8
Plea of *non est factum*	20	11
Order, leave to defendant to amend, January 20, 1871	22	12
Amended answer	22	12
Notice of plaintiff to defendant to produce, &c., and return	24	13
Motion of defendant for continuance	25	14
Order of continuance February 3, 1872	26	14
Further answer	26	14
Continuance June 26, 1872	35	17
February 10, 1873	35	17
June, 1873	35	17
January, 1874	35	18
Order, leave to plaintiff to amend, June 1, 1874	35	18
Amended petition, filed June 1, 1874	35	18
Agreement as to depositions	37	19
Order, leave to plaintiff to amend, and amendment	38	19
Waiver of trial by jury, February 4, 1875	44	22
Entry	44	22
Judgment	45	23
Opinion of the court	47	25
Motion to set aside judgment, and for new trial	59	29
Order overruling	60	29
Bills of exceptions 1 and 2, 3 and 4	61	30
Statement of facts	68	31
Act of legislature September 5, 1850	69	32
"A," proceedings corporation of city of San Antonio	82	36
Interrogatories and answers of F. L. Paschal and Sam. S. Smith	84	37

	Original.	Print.
Bonds and coupons	90	39
"B," proceedings corporation of city of San Antonio	101	45
"B," pages 5 to 14, proceedings corporation offered by defendant	104	47
Deposition of Nat Lewis	105	47
Thos. J. Devine	124	54
Jas. R. Sweet	138	59
John James	143	60
Sam. S. Smith	150	63
"C," part of proceedings corporation city of San Antonio	158	66
Deposition of Jas. R. Sweet	163	68
Special acts of legislature	169	70
Petition for writ of error	183	74
Bond for writ of error	185	75
Copy writ of error	188	76
Citation in error, and return	190	77
Certificate of clerk	192	78

a UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable judges of the circuit court of the United States, 5th circuit, in and for the western district of Texas, holding sessions at Austin in said district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said circuit court, before you, between Thomas J. Mehaffy who is plaintiff, and the City of San Antonio, who are defendants, No. 1139, on the docket of said circuit court of the United States, sitting at Austin in said district, a manifest error hath happened, to the great damage of the said City of San Antonio, who is plaintiff in error herein, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next in said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the U. States, 19th day of August, in the year of our Lord one thousand eight hundred and seventy-five, and seal our said circuit court, at Austin, in the one hundredth year of the Independence of the United States.

M. HOPKINS,
Clerk of the Circuit Court of the United States, West. Dist. of Texas, at Austin.

Allowed by—

T. H. DUVAL,
U. S. Judge.

(Indorsed:) In Supreme Court of the United States. City of San Antonio, pl'ff in error, vs. Thomas J. Mehaffy, def't in error. Writ of error to Supreme Court of the United States. Issued 19th day of August, A. D. 1875. M. Hopkins, cl'k circuit court U. States, at Austin.

b UNITED STATES OF AMERICA:

To Thomas J. Mehaffy, or his att'ys of record, Geo. W. Paschal, sen., & Geo. W. Paschal, jun., esq's, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Texas, 5th circuit, sitting at Austin, wherein the City of San Antonio is plaintiff, and you are defendants in error, to shew cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said

Supreme Court of the United States, this 19th day of August, in the year of our Lord one thousand eight hundred and seventy-five.

T. H. DUVAL,
U. S. Judge.

Test with seal of court at Austin this 19th day of August, A. D. 1875.

[SEAL.] M. HOPKINS, *Clk.*

Received this writ on the 8th day of September, A. D. 1875, and executed the same on the 13th day of September, 1875, by reading this writ to George W. Paschal, j'r, and handed him the accompanying writ, in person, at Galveston, in my district.

L. D. EVANS,
U. S. Marshal, E. D. T.,
By M. K. CANFIELD,
Deputy.

Sworn to and subscribed before me this 13th day of September, A. D. 1875.

[SEAL.] C. DART,
Clerk, U. S. Circ't C't, E. D. of Texas, at Galveston,
By JAMES T. SPANN, *Dep'ty.*

(Indorsed:) In Supreme Court of the United States. City of San Antonio, pl'ff in error, vs. Thomas J. Mehaffy, def't in error. Citation in error. Issued 19 day of August, A. D. 1875. M. Hopkins, cl'k. Served Geo. W. Paschal, jun., with this copy.

1 Be it remembered that at a term of the circuit court of the United States, 5th circuit, in and for the western district of Texas, begun and held at Austin, for the January term, 1875, commencing on the first Monday of said month—Hon. W. B. Woods, circuit judge; Hon. Thos. H. Duval, district judge; Hon. W. B. Woods, presiding—among other the following proceedings were had:

Petition.

THOMAS J. MEHAFFY, PL'FF,
vs.
CITY OF SAN ANTONIO, DEF'T. } No. 1139.

The petition (endorsed, to wit, 1139 C. C. Thomas J. Mehaffy vs. Corporation of City of San Antonio, filed March 31, 1870. M. Hopkins, clerk,) in words as follows:

UNITED STATES OF AMERICA.
District of Texas:

To the honorable Thomas H. Duval, judge of the circuit court of the United States for the western district of Texas:

Your petitioner, Thomas J. Mehaffey, a citizen of the State of Virginia, residing in the city of Alexandria, brings this suit against the City of San Antonio, a city of Texas, being a corporation incorporated by the State of Texas, and having its business-place in the city of San Antonio, where it does its corporate business in governing and
2 administering its affairs, and where all the corporators reside, all being citizens of Texas.

And thereupon your petitioner says that on the
the first day of March, 1862, the said city of
of a law thereto authorizing it,
able to the San Antonio & Mexican Gulf
ble after the first day of March, 1862, and bearing
centum per annum, and to each of which bonds were
coupons of the same date of the bonds.

And your petitioner says that in the due course of trade, and
valuable consideration, the said City of San Antonio, hereinbefore
on the first day of December, 1867, executed and delivered to
tioner its certain due-bills or coupons for a valuable
due course of trade, which are of the respective terms and
following, that is to say:

17.] CITY OF SAN ANTONIO BONDS. [17.

Due from the city of San Antonio to bearer thirty-five dollars,
six months' interest, due 1st September, 1860, upon bond No. 3,
$1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

18.] CITY OF SAN ANTONIO BONDS. [18.

Due from the city of San Antonio to bearer thirty-five dollars,
3 for six months' interest, due 1st March, 1861, upon bond No.
for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

19.] CITY OF SAN ANTONIO BONDS. [19.

Due from the city of San Antonio to bearer thirty-five dollars, for
months' interest, due 1st September, 1863, upon bond No. 3,
C. F. KING, *Mayor.*

(Across the face:) 3.

20.] CITY OF SAN ANTONIO BONDS. [20.

Due from the city of San Antonio to bearer thirty-five dollars,
six months' interest, due 1st March, 1862, upon bond No. 3, for
C. F. KING, *Mayor.*

(Across the face:) 3.

21.] CITY OF SAN ANTONIO BONDS. [21.

Due from the city of San Antonio to bearer thirty-five dollars,
six months' interest, due 1st September, 1862, upon bond No. 3,
$1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

22.] CITY OF SAN ANTONIO BONDS. [22.

Due from the city of San Antonio to bearer thirty-five dollars,
six months' interest, due 1st March, 1863, upon bond No. 3, for
C. F. KING, *Mayor.*

(Across the face:) 3.

23.] CITY OF SAN ANTONIO BONDS. [23.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1863, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

24.] CITY OF SAN ANTONIO BONDS. [24.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1864, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

25.] CITY OF SAN ANTONIO BONDS. [25.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1864, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

26.] CITY OF SAN ANTONIO BONDS. [26.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1865, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

27.] CITY OF SAN ANTONIO BONDS. [27.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1865, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

5 28.] CITY OF SAN ANTONIO BONDS. [28.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1866, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

29.] CITY OF SAN ANTONIO BONDS. [29

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1866, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

30.] CITY OF SAN ANTONIO BONDS. [30.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1867, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 3.

31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 3, for $1,000.

C. F. KING, Mayor.

(Across the face:) 3.

32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 4, for $1,000.

C. F. KING, Mayor.

(Across the face:) 3.

6 33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1868, upon bond No. 4, for $1,000.

C. F. KING, Mayor.

(Across the face:) 3.

34.] CITY OF SAN ANTONIO BONDS. [34.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 3, for $1,000.

C. F. KING, Mayor.

(Across the face:) 3.

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1869, upon bond No. 3, for $1,000.

C. F. KING, Mayor.

(Across the face:) 3.

17.] CITY OF SAN ANTONIO BONDS. [17.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1860, upon bond No. 4, for $1,000.

C. F. KING, Mayor.

(Across the face:) 4.

18.] CITY OF SAN ANTONIO BONDS. [18.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1861, upon bond No. 4, for $1,000.

C. F. KING, Mayor.

(Across the face:) 4.

7 19.] CITY OF SAN ANTONIO BONDS. [19.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1861, upon bond No. 4, for $1,000.

C. F. KING, Mayor.

(Across the face:) 4.

20.] CITY OF SAN ANTONIO BONDS. [20.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1862, on bond No. 4, for $1,000.
C. F. KING, *Mayor*.

(Across the face:) 4.

21.] CITY OF SAN ANTONIO BONDS. [21.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1862, upon bond No. 4, for $1,000.
C. F. KING, *Mayor*.

(Across the face:) 4.

22.] CITY OF SAN ANTONIO BONDS. [22.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1863, upon bond No. 4, for $1,000.
C. F. KING, *Mayor*.

(Across the face:) 4.

23.] CITY OF SAN ANTONIO BONDS. [23.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1863, upon bond No. 4, for $1,000.
C. F. KING, *Mayor*.

(Across the face:) 4.

8 24.] CITY OF SAN ANTONIO BONDS. [24.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1864, upon bond No. 4, for $1,000.
C. F. KING, *Mayor*.

(Across the face:) 4.

25.] CITY OF SAN ANTONIO BONDS. [25.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1864, upon bond No. 4, for $1,000.
C. F. KING, *Mayor*.

(Across the face:) 4.

26.] CITY OF SAN ANTONIO BONDS. [26.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1865, upon bond No. 4, for $1,000.
C. F. KING, *Mayor*.

(Across the face:) 4.

27.] CITY OF SAN ANTONIO BONDS. [27.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1865, upon bond No. 4, for $1,000.
C. F. KING, *Mayor*.

(Across the face:) 4.

28.] CITY OF SAN ANTONIO BONDS.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1866, upon bond No. 4, for $1,000.

C. F. KING, Mayor.

(Across the face:) 4.

9 29.] CITY OF SAN ANTONIO BONDS. [29.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1866, upon bond No. 4, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 4.

30.] CITY OF SAN ANTONIO BONDS. [30.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1867, upon bond No. 4, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 4.

31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 4, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 4.

32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 4, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 4.

33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1868, upon bond No. 4, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 4.

10 34.] CITY OF SAN ANTONIO BONDS. [34.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 4, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 4.

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest due 1st September, 1869, upon bond No. 4, for $1,000.

C. F. KING, *Mayor.*

(Across the face:) 4.

And your petitioner says that he being the bearer and holder of said due-bills or coupons, the said city is justly indebted to him for the full amount thereof, and interest thereon, to wit, three thousand dollars.

Nevertheless, although the time for the payment of said bonds has elapsed, the defendant has not paid the same, nor any part thereof, to the damage of the plaintiff three thousand dollars.

And therefore he sues and prays for process to be served upon the mayor of said city of San Antonio, and that at the trial he may have judgment for the amount thereon due, and interest thereon, and for all costs; and for such general and special relief as your petitioner may be entitled to.

GEO. W. PASCHAL &
GEO. W. PASCHAL, JR., and
RIDGE PASCHAL.

I acknowledge myself bound for all costs in this case.
31 Jan'y, 1870.

GEO. W. PASCHAL. [SEAL.]

11 Citation issued in due form to the defendant, endorsed: Citation to the City of San Antonio, county of Bexar. Issued 6 day of April, 1870. M. Hopkins, clerk.

Endorsed on the back of same is the marshal's return, to wit:

Received in office 20th day of April, 1870, and executed on the 27th day of April, 1870, by handing to W. C. Tellepape, the mayor of the city of San Antonio, Bexar Co., in person, a true copy of this writ, and a copy of the petition attached, both certified to by the clerk of the court, under the seal of the court.

THOS. F. PURNELL. *U. S. M.*,
By JOHN B. MARTIN, *Deputy U. S. M.*

And afterwards, at the June term, 1870, the following pleas were filed (endorsed, to wit: 1139, law. Mehaffey v. The City of San Antonio. Plea in abt., demurrer, answer, & notice of def't. Filed June 9th, 1870. M. Hopkins, clerk. Davis & Murphy & Alexander, for defendant); which is in words following, to wit:

12 In the circuit court of the United States for the western district of Texas, at Austin, at June term, A. D. 1870.

THOMAS J. MEHAFFEY, PLAINTIFF,
v.
THE CITY OF SAN ANTONIO, DEFENDANT. } Law. No. 1139.

And the City of San Antonio, the defendant in the above entitled and numbered cause, comes and defends the wro'g and injury, &c., and says that the pretended coupons in the petition of the plaintiff described and sued on, which are therein alleged to have been attached to certain bonds of defendant, payable to the San Antonio and Mexican Gulf Railroad, or bearer, were in fact executed to said railroad company and to no other person or persons, whether natural or artificial, and that said company was then chartered by the State of Texas, and by no other State; and that each of the several persons claiming to be corporators thereof was then a citizen of said State of Texas and a resident thereof, and of no other State, as will appear from an act entitled "An

act to incorporate the San Antonio Railroad Company," approved September 5, 1850; by virtue of section 12 of which act, and of no other authority, said pretended bonds and coupons were executed.

Wherefore, because defendant and said company were citizens of said State as aforesaid, defendant prays judgment if this court ought to take jurisdiction of said cause, and that the same be abated, &c.

DAVIS & MURPHY & ALEXANDER,
Attorneys for Defendant.

13 James P. Newcomb, late an alderman of the city of San Antonio, in behalf of said city, makes oath and saith that the foregoing plea in abatement to the jurisdiction is true in substance and in fact.

JAMES P. NEWCOMB.

Sworn & subscribed before me this 9th day of June, 1870.
M. HOPKINS, *Clk.*

And now comes the defendant to the above entitled and numbered cause, and, without waiving the foregoing plea, by way of answer to the petition of the plaintiff, first demurs thereto, and says that the same is insufficient in law. And defendant assigns the following causes in support of said demurrer:

First. Because it does not appear from said petition, nor from anything therein contained, that the pretended bonds therein described, and to which it is therein alleged that the pretended coupons sued on were attached, were under the corporate seal of defendant, or under any seal, or were ever delivered, nor to whom they were delivered.

Second. Because it does not appear as aforesaid that said pre-
14 tended bonds and said pretended coupons were made by "the mayor and aldermen of the city of San Antonio," in pursuance of the provisions of section 12 of an act entitled "An act to incorporate the San Antonio Railroad Company," approved September 5, 1850, or were made in conformity with any law or laws of Texas whatever.

Third. Because it does not appear as aforesaid that said railroad or railroad company ever organized and had user as a corporation under the act aforesaid, or under any law or laws of the State of Texas.

Fourth. Because it does not appear as aforesaid that the pretended bonds aforesaid were not redeemed and fully paid at some date after the first day of March, A. D. 1852, or at some other time before the date of the filing of said petition.

Fifth. Because it does not appear as aforesaid that the consideration provided for by section 12 of the act aforesaid was ever subscribed for or was ever received; nor yet that any consideration deemed valuable in law was ever paid or was ever received for said pretended bonds, said pretended coupons being incident thereto.

Sixth. Because it does not appear as aforesaid that said pre-
15 tended coupons were ever presented for payment, and that payment ever was demanded thereof.

Seventh. Because it does not appear as aforesaid that the issuance of the pretended bonds and coupons was not without and beyond the scope of the authority of defendant as a city corporation, under the laws of the State of Texas.

Eighth. Because it does not appear as aforesaid that, under the constitution and laws of the State of Texas, "in due course of trade," and for a valuable or for any consideration, said defendant could, on the first

day of December, 1869, or on any other date, have executed and delivered to the plaintiff the pretended coupons sued upon; and it further does not appear from said petition, which alleges that said pretended bonds were made on the first day of March, 1852, that the allegations touching the execution and delivery of said pretended coupons are, or by any possibility can be, true.

Ninth. Because it does not appear as aforesaid that said petition discloses any cause of action.

Tenth. Because of other causes apparent on the face of said petition.

And defendant, without waiving the foregoing plea and the
16 foregoing demurrer, by way of further answer to said petition, denies, all and singular, the allegations therein contained.

And defendant, by way of further answer, says that said pretended bonds and said pretended coupons were never made in conformity with section 12 of the act aforesaid, or in accordance with any law or laws of the State of Texas, by the mayor and aldermen of the city of San Antonio, but were made and issued in fraud, and were with full notice, both actual and constructive, so received, and that said pretended coupons sued upon were so issued and were so received by plaintiff, who, when he acquired the same, had full notice, as aforesaid, that they were null, void, and not binding upon defendant, because they were made in fraud of law and were obtained in fraud of law.

And defendant, by way of further answer, says that said pretended coupons sued upon have never been presented, and that payment thereof has never been demanded on the first days of March and September of the years in which they are alleged in said petition to have respectively become due, or any other time or times, by plaintiff, "at the office of the treasurer of the city of San Antonio," in accordance with the
17 terms of said pretended bonds, and that no tender to surrender the same has ever been made in accordance with the terms of said pretended bonds.

And defendant, by way of further answer, says that defendant has been and is a city corporation, duly organized, and having user for municipal purposes, and for such only, and duly authorized to act within and not without the scope of its authority; and that being such, and being so authorized, it could not and did not issue the pretended bonds and coupons in the petition described in conformity with the constitution and any law or laws of the State of Texas; all of which was well known to plaintiff, and of all which he had due notice, both actual and constructive, before and at the time at which it is alleged in said petition he obtained the pretended coupons sued upon, and that plaintiff having knowledge and notice, as aforesaid, obtained said pretended coupons in fraud, and with the intent to, by means thereof, wrong and defraud defendant out of the respective sums of money specified therein, together with the interest thereon.

And, by way of further answer, defendant says that said pre-
18 tended bonds and said pretended coupons in the petition mentioned and described are not the act and deed and were not executed and delivered by defendant, but, on the contrary, that said pretended bonds are not alleged in said petition to have been sealed, and, in fact, were not sealed, and said pretended coupons sued on appear of record not to have been executed in any manner by defendant, but to have been signed by one "C. F. King," who added the word "mayor" to his signature, thereby making said word descriptio personæ merely.

And defendant, by way of further answer, says that said railroad company, which never was organized and never had user as a corpora-

tion, according to law, forfeited such corporate rights as it might have obtained under its charter while in possession of and claiming title to the pretended coupons sued upon, and before the same or any part thereof had been delivered or in any manner transfered to plaintiff, of all which said plaintiff had full notice, both actual and constructive, prior to his obtaining possession of, and claiming to have title to, said pretended coupons, and that by reason of said facts said plaintiff did not obtain, has not now, and cannot obtain title to said pretended coupons, and is not the owner thereof.

19 And, by way of further answer, defendant says, that said pretended bonds and said pretended coupons attached to and incident thereto were obtained in fraud of law on the first day of March, A. D. 1852, and that said pretended bonds do not contain any contract words, showing when the same are payable, are not under seal, or scroll in lieu thereof, and are barred by the statute of limitations; all of which will appear from an inspection thereof, or of any of the pretended bonds of like issue.

And, by way of further answer, defendant says, that said pretended bonds and said pretended coupons incident thereto, as aforesaid, together with all other pretended bonds of like issue, do not on the face thereof purport to be bonds, but amount only to certificates made by said King and one [redacted]. Buquor, and not by "the mayor and aldermen of the city of San Antonio," contain no definite contract words, recite no consideration whatever, and are not under seal, or scroll in lieu thereof; all of which will more fully appear from an inspection thereof, or of any of the pretended bonds of like issue, and are on the face thereof null, void, and of none effect.

DAVIS & MURPHY & ALEXANDER,
Attorneys for Defendant.

20 To the plaintiff in the above-entitled and numbered cause, and to his attorneys of record:

GENTLEMEN: You will please to take notice that you are required to produce and deposit with the clerk of this court, subject to the inspection of the undersigned, before the calling of this cause for trial, the pretended bonds and coupons in the petition of plaintiff referred to, and that in case of your failure so to do that defendant will offer in evidence other pretended bonds and coupons of like issue to prove the words and signature thereof.

Yours, &c.,

DAVIS & MURPHY & ALEXANDER,
Attorneys for Defendant.

And afterwards, to wit, on June 18th, 1870, the following plea was filed (endorsed, to wit, 1139. Law. Mehaffey v. The City of San Antonio. Plea of non est factum & aff't. Filed by leave of court June 18, 1870. M. Hopkins, clerk. Davis & Murphy & Alexander, attor-
21 neys for defendant), which is in words as follows:

Plea of non est factum.

In the circuit court of the United States for the western district of Texas, at Austin, June term, A. D. 1870.

THOMAS J. MEHAFFEY, PLAINTIFF,
vs.
THE CITY OF SAN ANTONIO, DEFENDANT. } No. 1139. Law.

And now comes the defendant in the above-entitled and numbered

cause, by its attorneys, and defends, &c., and by way of further answer unto the petition of the plaintiff therein, says that each of the pretended bonds in said petition described, and each of the pretended due-bills or coupons therein described and sued on, is not the act and deed of defendant, and this defendant is ready to verify, &c.

DAVIS & MURPHY & ALEXANDER,
Attorneys for Defendant.

I, Wilhelm C. A. Thielepape, as mayor of the city of San Antonio the defendant in the above-entitled and numbered cause, being duly sworn, do make oath and says that the foregoing plea of non est factum is true.

WILHELM C. A. THIELEPAPE,
Mayor of the City of San Antonio.

Sworn to and subscribed before me this 18th day of June, A. D. 1870.

THOMAS M. PASCHAL,
U. S. Commissioner, W. D. T.

22 *Order.—Leave to def't to amend.*

And afterwards, to wit, on the 18th June, A. D. 1870, the following order appears on docket, to wit: Leave to def't to file am'd answer.

And afterwards, to wit, on the 20th January, A. D. 1871, the following answer, by way of amendment, was filed (endorsed, to wit, No. 1139. Law. Thomas J. Mehaffey, plaintiff, vs. The City of San Antonio, defendant. Additional answer by way of amendment of answer. Filed January 20, 1871. M. Hopkins, cl'k. Davis & Murphy & Alexander, attorneys for defendant), which is in words as follows:

In the circuit court of the United States for the western district of Texas, at Austin, at January term, A. D. 1871.

THOMAS J. MEHAFFEY, PLAINTIFF,
v.
THE CITY OF SAN ANTONIO, DEFENDANT. } No. 1139.

And the city of San Antonio, the defendant in the above-entitled and numbered cause, without waiving any of the several defenses on file therein, and with leave of the court, in open court, files the following additional matter of defense, the same being an addition made as an amendment to the answer filed therein on the ninth day of June, A. D. 1870, to wit:

23 Said defendant, by way of further answer, says that said Thomas J. Mehaffey, the plaintiff in this suit, did not purchase and become the owner of the coupons sued upon, in good faith without notice and before the maturity thereof, and for a valuable consideration; but, on the contrary, defendant avers that said plaintiff, in bad faith, with notice actual and constructive, after the maturity thereof, and without paying any valuable consideration therefor, and having knowledge that said coupons and the pretended bonds to which they were attached were void and worthless, acquired a pretended title only to such of said coupons sued upon of which he never has been and is not the owner, and that said plaintiff is only the apparent owner of said coupons for the use and benefit of some other person or persons to de-

fendant unknown, having like notice and knowledge with said plaintiff, and for whose benefit, and not for the benefit of said plaintiff, this suit is prosecuted in fraud of the rights of defendant; all of which defendant is ready to verify, &c.

DAVIS & MURPHY & ALEXANDER,
Attorneys for Defendant.

24 And afterwards, to wit, on the 25th January, A. D. 1871, the following notice to produce was filed (endorsed as follows, to wit: No. 1139, Law. Thomas J. Mehaffey, plaintiff, vs. The City of San Antonio, defendant. Notice to produce. The clerk will have copy made, and hand to marshal for service. Paschals, att'ys. Filed January 25, 1871. M. Hopkins, clerk), which is in words as follows, to wit:

Pl'ff' notice to Def't to produce, &c.

In United States circuit court at Austin, Texas.

THOMAS J. MEHAFFEY, PLAINTIFF,
vs.
THE CITY OF SAN ANTONIO, DEFENDANT. } No. 1139. Law side.

To the defendant, and Messieurs Davis and Murphy and William Alexander, defendant's attorneys of record:

You are hereby required to produce, on the trial of said cause, the original records, or a certified copy of the same, of the city of San Antonio, showing that C. F. King was elected mayor of said city and exercised the functions of the office of mayor of said city during the years 1851 and 1852, or a large portion of that time, and also the acts of the council authorizing the issuance, and the signature of the said King, as mayor, of the coupons sued on in this cause; and on your failure to do so, secondary evidence of these facts will be used.

GEO. W. PASCHAL S'R, and
GEO. W. PASCHAL, J'R, and
RIDGE PASCHAL,
Attorneys for Plaintiffs.

Endorsed on same is the marshal's return of service, to wit:

Came to hand Jan'ry 26th, 1871. Executed same day by handing W'm Alexander a certified copy hereof.

JOHN T. ALLAN, *U. S. M.*,
By R. B. JOHNS, *Dep'ty.*

Service $2.00.

25 And afterwards, to wit, on January 20th, 1872, the following motion was filed (endorsed, to wit, No. 1139. Law. Mehaffey vs. The City of San Antonio. Motion for continuance. Filed January 20, 1871. M. Hopkins, cl'k. Davis, Murphy & Alexander, attorneys for defendant), which is in words following, to wit:

Motion for continuance.

In the circuit court of the United States for the western district of Texas, at Austin, at January term, A. D. 1871.

THOMAS J. MEHAFFEY, PLAINTIFF,
vs.
THE CITY OF SAN ANTONIO, DEFENDANT. } No. 1139. Law.

The City of San Antonio, the defendant in the above entitled and numbered suit, by its attorneys, refer'ing to its bill of discovery and the affidavit filed thereto, filed simultaneously with this motion in the equity side of this honorable court as a part thereof, moves the court to order that this suit stand continued until said Thomas J. Mehaffey shall have filed an answer to said bill, giving the discoveries sought thereby, to be read in evidence in behalf of the defendant in this suit.

DAVIS, MURPHY & ALEXANDER,
Attorneys for Defendant.

26 *Order of continuance.*

And afterwards, to wit, on the 13th June, A. D. 1871, the following order appears on the docket, to wit: "Continued by court."

And afterwards, to wit, on the 3rd Feb'y, A. D. 1872, the following order appears on docket, to wit: "Continued.'

And afterwards, to wit, on Feb'y 3d, 1872, the following answer was filed (endorsed, to wit, No. 1139. Thomas J. Mehaffey vs. Corporation of city of San Antonio. Answer. Filed Feb. 3d, 1872. M. Hopkins, cl'k), which is in words as follows:

Further answer.

THOMAS J. MEHAFFEY
vs.
THE CITY OF SAN ANTONIO. } No. 1139.

And now comes the defendant, by their attorneys, and defend the wrong and injury, when, &c., and says that the petition of said plaintiff, and the matters and things therein stated and set forth, are insufficient in law for him to have and maintain his action herein, and this
27 defendant is not bound by law to answer the same; and of this he prays judgment of the court whether he shall be compelled further to answer herein. And by reason of the insufficiency of plaintiff's petition herein, he prays to be dismissed with costs.

And for special exception and demurrer, the defendant shows the court the following special causes therefor, to wit:

First. That by the pleadings of the plaintiff, and the allegations in the petition, and the records and matters therein referred to, it was incumbent on said plaintiff, before he could make this defendant liable in law to answer this action or defend the same, for the said plaintiff first to seek payment out of another fund, specially provided by law, for satisfaction of plaintiff's cause of action herein, which he has not shown.

Second. The allegation of the issuance of the coupons (in pursuance of the acts, doings, and ordinances of the mayor and board of alder-

men, sitting as the city council) is too vague, indefinite, and uncertain to advise this defendant to answer thereto, and for this he specially excepts and demurs; wherefore he prays judgment of the court as in general demurrer, &c., &c.

DAVIS & MURPHY,
E. G. HUSTON, and
HOWARD & HARRISON,
Att'ys for Def.

28 THOMAS J. MEHAFFEY *vs.* THE CITY OF SAN ANTONIO. } No. 1139.

And the said defendant, leave of the court being had and obtained, comes and amends his original answer, by abandoning all and every allegation or matter therein stated, which are inconsistent with, or contradictory of, the following amendment of the same, and for reasons herein:

First. Reserving the benefit of the general and special demurrers aforesaid, the said defendant says that he is informed and believes, and so charges the facts to be, that at the time of the supposed issuance of the pretended coupons referred to in plaintiff's petition there was no such corporation as the San Antonio Mexican Gulf Railroad Company; and, further answering, this defendant is informed and believes, and so charges, that C. F. King, mayor of the city of San Antonio at the time said coupons were issued, if issued at all, had no authority in law to issue the same, and this defendant is not liable in law or equity therefor.

And, for further answer, this defendant is informed and believes, and so charges the facts to be, that the said plaintiff, combining and confederating with the pretended officers of the pretended San An-
29 tonio and Mexican Gulf Railroad Company, and with the president, employees, and agents thereof, to defraud, oppress, harrass, and annoy this defendant, did fraudulently and wrongfully obtain possession of the said coupons, well knowing at the time that the same were void and worthless, and were issued, if issued at all, without consideration, and would not be paid by this defendant; all of which were known to said plaintiff.

And, for further answer, the defendant is informed and believes, and specially charges, that it is not true that the said pretended coupons were issued in accordance with a vote of the qualified electors of the city of San Antonio, and of an act to incorporate the San Antonio and Mexican Gulf Railroad Company, passed by the legislature of the State of Texas, and approved Sept. 5th, 1850, nor in pursuance of the legal acts, doings, and ordinances of the mayor and board of aldermen, composing the city council of said city, or in the *the* legitimate discharge of the lawful power vested in them by the constitution and laws of the State of Texas.

And for further answer, this defendant is informed and believes, and so charges the fact to be, that the act referred to in plaintiff's petition, to wit, the act to incorporate the San Antonio and Mexican Gulf
30 Railroad Company aforesaid, passed by the legislature of the State of Texas, was unconstitutional and void, and in violation of the 24th and 27th sections of the 7th article of the constitution of the State of Texas, at the time of the approval of said act.

And further answering, this defendant is informed and believes, and so charges the fact to be, that the terms embraced in said act, enabling it to contract with the said city, the defendant herein, were not complied with in any of its essential terms, and the contract on the part of said

city, there being no mutuality at the time of the supposed issuance of the said pretended coupons, or any consideration given therefor, was consequently null and void from the beginning; all of which was known, or might, by due diligence, and should have been known to plaintiff herein.

And further answering, this defendant is informed and believes, and so charges the facts to be, that if said contract under which said coupons were issued, if issued at all, was ever valid, which this defendant denies, it has been forfeited by the said railroad company and their pretended assignees, because the charter had expired by its own limitation before the issuance of said coupons, and a renewal by the legis-
31 lature without the consent or approval thereof, or subsequent valid ratification by the defendant, could not operate to revive or renew the assumed contract between the parties, plaintiff and defendant, and the parties in plaintiff's pleadings, for that the said renewal and revival would be retroactive and contrary to the constitution, and could not effect this defendant or hold him liable or indebted to said plaintiff, as stated in his petition, and because that by the misrepresentations, fraud, and bad management practiced by the said railroad company and their agents defendant was deceived in issuing said coupons, if issued at all, under authority of law, which defendant denies, and because of the total failure of said railroad company to comply with the promises and inducements made by them and their agents, the consideration for which said bonds and coupons were issued, if issued at all, being the said promises and engagements; all of which said plaintiff well knew, and had notice of at the time, or might have had, and should have had by proper diligence, which was incumbent upon him.

And for further answer and plea in this behalf, this defendant says that he is informed and believes, and so charges the facts to be,
32 that long before the institution of plaintiff's suit, and long before the said coupons became due, to wit, on or about the day of , A. D. 1855, the same were fully settled and discharged by defendant in manner following, to wit: by the substitution of a new contract entered into between this defendant and the said railroad company, by a proposal consum'ated and entered into on the part of said railroad company to this defendant for the payment of the sum of about five thousand dollars for the full payment and satisfaction of all the bonds and coupons which were wrongfully issued as aforesaid, if issued at all, which this defendant denies, which said proposal was then and there accepted and agreed to by said railroad company and this defendant, which said defendant was ready at all times to perform on his part as agreed to, and which was in full satisfaction of all of said pretended bonds and coupons, and was a full compromise of this defendant's supposed liability.

Notwithstanding which, the said railroad company, by their fraudulent and unconscientious acts, and disregarding, in bad faith, the said contract as aforesaid thus entered into by them, prevented this de-
33 fendant from carrying out, as they agreed to do, said contract so as aforesaid entered into, and as this defendant was always ready to do and perform on his part, in strict compliance with the same, all of which was known to said plaintiff, and this he is ready to verify, &c.

THE STATE OF TEXAS,
County of Bexar:

Personally appeared before me, the undersigned authority, W. C. A. Thielepape, mayor of the city of San Antonio, who, being duly sworn,

believes them to be true.

Sworn to and subscribed before me this day of March, A. D. 1869.

And for further answer in this behalf the said defendant, by attorneys, says that the pretended coupons, if issued at all, which defendant denies, purport to be issued for interest on bonds, and could not bear interest until matured into a judgment by a court of competent jurisdiction.

And for further answer, defendant says and so charges that the said plaintiffs fraudulently and wrongfully did combine and confederate with the said railroad company, well knowing all the facts in the premises said answer, to harrass, oppress, and annoy this defendant by the wrongful institution of this suit, to the great damage of this defendant, to wit, the sum of five thousand dollars, which damages it pleads in reconvention.

34

And said defendant, further answering, says that, admitting to be true only the allegation in plaintiff's petition that "the city of San Antonio, this defendant, is a body-corporate in the county of Bexar and State of Texas," corporate and politic, duly incorporated by the legislature of the State of Texas, deny, all and singular, all the other allegations and charges in plaintiff's petition contained, not herein already specially denied, and of this he puts himself upon the country.

And the said defendant prays that the said coupons may be annulled and held for naught, and the said plaintiff be perpetually enjoined from having or maintaining any further action thereon against this defendant; and of this he prays judgment, &c.

DAVIS & MURPHY,
E. G. HUSTON,
HOWARD & HARRISON,
Att'ys for Def.

Feb. 3d, 1872.—Docket entry continued.

35

And afterwards, to wit, on June 26th, 1872, the following entry appears on the minutes of the court, to wit:

THOMAS J. MEHAFFEY
vs.
THE CITY OF SAN ANTONIO.

Continued generally.

And afterwards, to wit, on January term, 1873, the following entry appears on the minutes of the court, to wit:

THOMAS J. MEHAFFEY
vs.
THE CITY OF SAN ANTONIO. } No. 1139.

Feb'y 10th, '73. Continued by court.

And afterwards, at the June term, 1873, the same order appears, to wit:

Continued.

And afterwards, at the January term, 1874, the same order appears, to wit:

Continued.

And afterwards, at the June term, 1874, the following entry appears, to wit:

Order.—Leave to pl'ff to amend.

THOMAS J. MEHAFFEY
vs.
THE CITY OF SAN ANTONIO. } No. 1139.

On motion of plaintiff, by attorney, he has leave to file amended petition; and by agreement of parties, by their attorneys, this cause is set for Friday next, the fifth of June.

And afterwards, to wit, on the 1st June, 1874, the following
36 amended petition was filed, to wit (endorsed, to wit, No. 1139. T. J. Mehaffey v. San Antonio. Amended petition. Filed 1 June, 1874. M. Hopkins, cl'k), which is in words as follows, to wit:

Amended petition.

In the circuit court of the United States, western district of Texas, law side.

THOMAS J. MEHAFFEY
v.
THE CITY OF SAN ANTONIO.

Now comes the plaintiff in the above-entitled cause, by attorney, and by leave of the court, by way of replication to the defendant's answer, and as amendatory of his petition, and says that the said defendant, at the time of the execution and issuance of the bonds and the attached coupons herein sued on, was not authorized by its charter to have, nor did it have at that time, a corporate seal, and that said bonds and coupons were not impressed with a corporate or other seal, for the reason that said city did not have or use such seal.

And for further amendment the plaintiff says that said bonds and coupons were executed and issued by the city of San Antonio by virtue of an act of the legislature of the State of Texas authorizing and
37 empowering said city to execute and issue said bonds, entitled "An act to incorporate the San Antonio and Mexican Gulf Railroad," approved 5 September, A. D. 1850.

And for further amendment the plaintiff says that the allegation in the original petition that the coupons sued on were executed and delivered to the plaintiff by the defendant on the first day of December, 1869, means that said coupons came into the hands of the plaintiff in due course of trade, and for a valuable consideration, on or before the first day of December, 1869.

Wherefore the plaintiff prays for judgment, &c., on his original petition.

RIDGE PASCHAL,
Att'y for Plaintiff.

And afterwards, to wit, on October 23d, 1874, the following "agree-

ment of counsel" was filed (endorsed, to wit, No. 1139. Thos. J. Mehaffy, vs. City of San Antonio. On law docket. Agreement of counsel concerning evidence. Filed October 23rd, 1874. M. Hopkins, Clk.), which is in words as follows:

Agreement.

38 In the circuit court of the United States for the western district of Texas.

THO'S J. MEHAFFEY
vs.
CITY OF SAN ANTONIO. } No. 1139. Law docket.

We, the undersigned, counsel for the respective parties to the above-mentioned suit, hereby consent that all depositions and documentary evidence taken or to be taken in the case of R. S. Gould vs. City of San Antonio, and now pending in said court, may be used as evidence in this case, subject only to such exceptions to the admissability of the same as would apply if offered in the said case of R. S. Gould.

DAVIS & BRITTON,
For City of San Antonio.
GEO. W. PASCHAL, J'R,
For Mehaffey.

And afterwards, to wit, the following entry appears on the minutes of the court, Monday morning, January 18, 1875:

Order.—Leave to pl'ff to amend.

THOMAS J. MEHAFFEY
vs.
CORPORATION OF CITY OF SAN ANTONIO. } 1139.

On this day came the attorney of plaintiff, Geo. W. Paschal, Jr, and on his motion it was ordered that he have leave to amend the pleadings in this cause.

And thereupon the amended plea was filed (endorsed, to wit,

39 1139. Thomas J. Mehaffey vs. The City of San Antonio. Original. Amended petition. Filed January 18, 1875. M. Hopkins, clerk.

I accept service of copy of within petition, but reserving demurrer and exception to admission or filing of same.

Austin, Tex., Nov'r 6th, '74.

EDMUND J. DAVIS,
For Def't.)

Which is in words as follows:

Amended petition.

In the United States circuit court for the western district of Texas.

THOMAS J. MEHAFFEY
v.
THE CITY OF SAN ANTONIO. }

Your petitioner, Thomas J. Mehaffey, by leave of the court first had

and obtained, amends his petition in this behalf, and says that since the commencement of his suit the bonds from which the coupons declared upon in the original petition were detached have matured and fallen due, and remain unpaid.

And, further, your petitioner says that heretofore, to wit, on the first day of March, 1852, the city of San Antonio, by C. F. King, its mayor, and P. L. Buquor, its secretary, being lawfully thereto authorized by the said defendant, executed its two instruments numbered 3 and
40 4, which are in precisely the same words, except that one is headed "No. 3" and the other "No. 4," and each of which, after numbering, reads as follows:

$1,000.] THE STATE OF TEXAS, CITY OF SAN ANTONIO, SEVEN PER CENT. BONDS. [$1,000.

This is to certify that the corporation of the city of San Antonio is indebted to the president and directors of the San Antonio and Mexican Gulf Railroad Company, or bearer, the sum of one thousand dollars, redeemable after the 1st day of March, A. D. 1872, with interest at seven per centum per annum, payable semi-annually on the first day of March and September in each year, at the office of the treasurer of the city of San Antonio, on presentation and surrender of the proper coupon hereto annexed.

This debt is authorized by a vote of the electors of the city of San Antonio, taken in accordance with the provisions of an "act to incorporate the San Antonio and Mexican Gulf Railroad Company," approved September 5, 1850.

Entered and recorded in the office of the city treasurer, and is transferable on delivery.

41 City Hall, city of San Antonio, March 1st, 1852.

C. F. KING, *Mayor.*

P. L. BUQUOR,
Secretary City of San Antonio.

And to each of said bonds were attached forty coupons, thirty-five of which are described and declared upon in the original petition, and the remaining five of which are in the words and figures following, that is to say:

36.] CITY OF SAN ANTONIO BONDS. [36.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1870, upon bond No. 3, f. $1,000.

C. F. KING, *Mayor.*

37.] CITY OF SAN ANTONIO BONDS. [37.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1870, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

38.] CITY OF SAN ANTONIO BONDS. [38.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1871, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

39.] CITY OF SAN ANTONIO BONDS. [39.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1871, on bond No. 3, for $1,000.

C. F. KING, *Mayor.*

42 40.] CITY OF SAN ANTONIO BONDS. [40.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1872, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

And your petitioner says that the said instruments were delivered to the San Antonio and Mexican Gulf Railroad Company, a corporation of the State of Texas, which thereby became the bearer thereof, with the right to transfer them to any other bearer by delivery; and the said railroad company, as bearer thereof, put the same into circulation for a valuable consideration. And the said instruments afterwards, to wit, on the 1st day of March, 1872, were delivered to your petitioner in the due course of trade, who became the lawful bearer and holder thereof, with the right to sue for the recovery of the amount due thereon in his own name.

And now your petitioner says that he is a citizen of the State of Virginia, and the defendant is a citizen of the State of Texas; that there is due to your petitioner upon each of said bonds one thousand dollars ($1,000) of principal and twenty-three hundred and $\frac{66}{100}$ ($2,300.66) dollars of interest down to the 1st day of January, 1875.

43 And he says that the whole amount of principal and interest upon the bonds and coupons remain due and unpaid by the defendant, although the defendant has often been requested to pay the same, which he has refused to do.

The premises considered, your petitioner prays that upon service of a copy of this amendment the defendant may be directed to answer the same, and that at the hearing he may have judgment for the whole amount of principal and interest due upon said bonds numbered 3 and 4, and upon the coupons thereto attached; and also a judgment for his costs.

GEO. W. PASCHAL &
GEO. W. PASCHAL, J'r,
For Plaintiff.

The defendant and its attorneys of record, Edward J. Davis and William Alexander, will take notice that we have this day filed the original of the foregoing copy of this amended petition, with the papers in the cause, and that at the next term of the court I shall ask that the amendment be allowed, and in the mean time you may answer the same, if you choose.

GEO. W. PASCHAL &
GEO. W. PASCHAL, J'r,
For Plaintiff.

44 And afterwards, to wit, on the 4th day of Feb'y, 1875, the following waiver of jury was filed (endorsed, to wit: No. 1139. U. S. circ. court, west dist. Texas, at Austin. Thomas J. Mehaffey vs. The City of San Antonio. Waiver of jury. Filed Feb'y 4, '75. M. Hopkins, cl'k); which is in words as follows:

In U. S. C. C. at Austin.

THO'S J. MEHAFFEY
v.
CITY OF SAN ANTONIO. } No. 1139.

In this cause the parties waive trial by jury, and submit the issues to the court.

GEO. W. PASCHAL, J'R,
For Plaintiff.
DAVIS & BRITTON,
For Def't.

And afterwards the following entry appears on the minutes of the court, Thursday, Feb. 4, 1875:

Entry.

THOMAS J. MEHAFFY
vs.
CORPORATION OF THE CITY OF SAN ANTONIO. } 1139.

This cause called for final hearing, came the parties, by their
45 att'ys, the pl'ff by George W. Paschal & Waelden, and the defendant by Davis & Britton, and a jury having been waived, the case proceeded before the court on the evidence and argument until the hour of adjournment.

FR'DAY, *February* 5, 1875.

THOMAS J. MEHAFFY
vs.
CORPORATION OF CITY OF SAN ANTONIO. } 1139.

On this day came the parties, by their counsel, pl'ff by G. W. Paschal & Waelden, and defendant by Davis & Britton, and thereupon the argument proceeded, and the evidence and argument having been closed, the court holds the case for consideration.

And afterwards the following judgment appears on the minutes of the court:

Judgment.

SATURDAY MORNING, *Feb'ry 6th*, 1875.

THOMAS J. MEHAFFY
vs.
THE CITY OF SAN ANTONIO. } 1139.

This day came the parties, by their attorneys, and having filed a written stipulation waiving trial by jury, submit this cause to the court upon the issues of fact as well as of law.

And the court having considered the demurrers of the defendant to the declaration of plaintiff, is of opinion that said demurrers are not well taken, and it is therefore adjudged that the same be, and they are hereby, overruled.

And the court having heard the evidence and arguments of counsel upon the issues of fact presented by the pleadings, find said issues for the plaintiff; and assesses the damages of the plaintiff by reason of the premises at five thousand one hundred and twenty-five 40 dollars ($5,125.40).

Therefore it is considered by the court that the plaintiff recover of the defendant the said sum of five thousand one hundred and twenty-five dollars and forty cents, his damages aforesaid, in form aforesaid
46 assessed, and also his costs in this behalf expended, to be taxed by the clerk.

Ordered, that the defendant pay its own costs herein; for all of which the plaintiff may have his execution.

The opinion of the court was delivered by the Hon. W. B. Woods, circuit judge presiding, and is in words to wit:

47 *Opinion of the court.*

In United States circuit court, 5th circuit, in and for the western district of Texas, at Austin.

THO'S J. MEHAFFY
vs.
THE CITY OF SAN ANTONIO. } No. 1139.

Certified copy of the opinion of the court, Hon. W. B. Woods, circuit judge, delivering the opinion.

This action is brought upon two bonds purporting to be issued by the city of San Antonio, Texas, and upon the 40 certified coupons attached to each of said bonds.

The bonds are identical, same in No., and the coupons same in number and date of maturity.

The following is a copy of one of the bonds:

$1,000.] THE STATE OF TEXAS, CITY OF SAN ANTONIO, [$1,000.
SEVEN-PER-CENT. BOND.

This is to certify that the corporation of the city of San Antonio is indebted to the president and directors of the San Antonio and Mexican Gulf Railroad Company, or bearer, in the sum of one thousand dollars, redeemable after the first day of March, 1872, with interest at seven per centum per annum, payable semi-annually, on the first day of March and September in each year, at the office of the treasurer of the city
48 of San Antonio, on presentation and surrender of the proper coupon hereto annexed.

This debt is authorized by a vote of the electors of the city of San Antonio, taken in accordance with the provisions of an act to incorporate the San Antonio and Mexican Gulf Railroad Company, approved Sept. 5, 1850. Entered and recorded in the office of the city treasurer, and is transferable on delivery, city hall, city of San Antonio, March 1, 1852.

C. F. KING, *Mayor.*

P. L. BUGUON,
Secretary City of San Antonio.

The following is a copy of one of the coupons:

Due from the city of San Antonio to bearer thirty-five dollars for six months' interest, due March 1, 1870, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

The plaintiff avers himself to be the holder and owner of the bonds and coupons, and that he acquired the same before the maturity of the bonds, for a valuable consideration, and prays judgment for the amount due thereon against the city of San Antonio.

Several grounds of defence are set up by the city of San Antonio, which will be noticed in their order.

49 1st. It is alleged that the section of the law by authority of which the bonds were issued was not constitutionally enacted.

This objection is based upon an alleged defect in the title of the act.

Section 24 of article 7 of the Texas constitution of 1845 (1 Paschal's Digs., 67), which was in force at the time of the passage of the act, declares that "every law enacted by the legislature shall embrace but one object, and that shall be expressed in the title."

The title of the act is as follows: "An act to incorporate the San Antonio Railroad Company."

The act contained the provisions usually found in acts creating railroad corporations, and the 12th section provided that the city of San Antonio might, upon a vote of the people in favor of the subscription, subscribe for not more than $50,000 of the stock in the railroad company, and might issue bonds in payment thereof. Like power was by the same section given to other municipal and political corporations along the line of the road.

It is claimed that the object of this section is different from the object to be attained by the other sections of the act, and that it is not expressed in the title. In other words, that the act has two objects, and that only one of them is expressed by the title.

The constitutionality of section 12 of the act under consideration has twice been passed upon by the supreme court of Texas.

50 In the case of San Antonio vs. Lane (32 Texas, 412), the 12th section was held not to be obnoxious to the clause of the constitution above cited, and to be a valid and binding enactment. In the case of San Antonio vs. Gould (in 34 Texas, 49), the precisely opposite view was held, and the 12th section declared to be unconstitutional, null, and void.

We do not feel bound to follow this last decision merely because it is the last. "It is the rule of the United States courts to follow the latest settled adjudications of a State court, involving the construction of a State law or constitution. But it cannot be expected that the U. S. courts will follow every oscillation of opinion, from whatever cause arising, that may possibly occur." (Gelpcke vs. Dubuque, 1 Wall. 205.) We feel, therefore, at liberty to follow either one of these decisions as shall seem to our judgment most sound.

The question in controversy is not free from doubt, and because it is not free from doubt, we feel it to be our duty to follow the first adjudication and hold the section to be constitutional. We are also of opinion that the weight of argument is with the court which sustained the section.

We therefore hold that the objection to the validity of the bonds founded on the unconstitutionality of the 12th section of the act of

51 Sept. 5, 1850, must be overruled.

2. It is claimed that the bonds were without consideration and therefore void, and that plaintiff had notice of the fact before he received the bonds. We think the proof fails to show that the plaintiff had notice of any want of consideration in the bonds before he acquired them, even if such want of consideration actually existed. But we are also of opinion that the proof establishes the fact that the bonds were issued for a good and sufficient consideration which has not failed. The evidence shows that on Dec. 5, 1850, the question whether the city of San Antonio should subscribe to the capital stock of the railroad company was submitted to a vote of the electors of the city; that a large majority of those voting voted for the subscription; that on the 24th day of February, 1851, the city council passed an ordinance directing the mayor to subscribe $50,000 to the capital stock of the railroad company; that the stock was accordingly subscribed; that the mayor voted upon the stock of the city at meeting of the stockholders, and that the city was recognized by the railroad company as the owner of the $50,000 of stock subscribed by it. The evidence further shows that on the 20th of April, 1851, the city council passed a resolution directing the mayor to issue to the railroad company the bonds of the city
52 in payment of the stock so subscribed. The evidence further shows that it was in payment of the stock thus subscribed that the bonds of the city were issued and delivered to the railroad company. How it can be claimed that the bonds were without consideration, we are unable to comprehend. The city got the stock in the railroad company, and in payment therefor issued its bonds to the company. There is not one word of evidence that the city ever surrendered the stock or reconveyed it to the railroad company, or that it does not hold it to this day. The city may have made a bad bargain, the stock may have proved worthless; but it got precisely what it bargained for, and it cannot say that it received no consideration. The affairs of the railroad company may have been badly managed, and other reasons may have conspired to defeat the enterprise; but that is no reason why the city of San Antonio should not pay for the stock which it subscribed for and got.

3. It is further objected to a recovery that at the time when the bonds were issued, to wit, on March 1, 1852, the railroad company had forfeited its charter and therefore had no existence. The inference sought to be drawn from this fact is that the bonds issued to the company by the city of San Antonio were void. The 18th section of the act by which the railroad company was incorporated declares as follows: "If said railway is not commenced within one year from the first of
53 November, 1850, and if at least 20 miles are not in running order within three years from its commencement, then the charter shall be null and void."

It is shown by the proof that no bona-fide commencement of work on the railway was made within one year from the first of November, 1850. It is therefore claimed that when the bonds were issued on March 1, 1852, the company had forfeited its charter, and no valid bonds could be issued to it. In reply to this position, it is obvious to remark, that when the city made its subscription of stock, there was no question about the continued existence of the charter of the railroad company. The year within which the company was, by its charter, to commence work had not elapsed. The city subscribed $50,000 stock in a subsisting corporation. It was bound by its contract to issue its bonds for a like amount in payment of the stock. It actually did issue its bonds for that purpose, payable to the railroad company or bearer, and de-

livered them to the officers of the railroad company. The fact, if it be a fact, that the company had forfeited its charter, did not cancel the debt due from the city of San Antonio, nor render the bonds issued in payment of the debt void. Any creditor of the company might have enforced the payment of the debt due from the city for the stock.

But we are by no means of opinion that the railroad company
53½ was defunct at the date of the issue of the bonds, because it had failed to commence the work of construction within one year from November 1st, 1850.

On the 14th of February, 1852, before the bonds were issued, the legislature passed an act extending the time for the commencement of work upon the railroad for two years from date of the act.

The continued existance of the railroad company as a corporate body was thus recognized by the legislature, and any forfeiture of its charter for failure to commence work within a year after November 1st, 1850, was waived by legislative authority.

We have no doubt, therefore, that on March 1, 1852, when the bonds were issued, the railway company was a subsisting corporate body. It has been urged that the act of Feb. 14, 1852, extending the time for the commencement of work by the R. R. Co., made a radical change in the charter of the company, and that a vote of the citizens of San Antonio to issue bonds to a railroad company which was bound by its charter to commence work in one year, does not justify the issue of bonds to a company which is allowed three years in which to commence work. To sustain this view the case of Mark vs. Fulton County, 10 Wall., 681, is cited. In that case it was held that a subscription of stock and issue of county bonds, authorized upon a vote of the people of the county to an original corporation, could not be legally made to one of three new corporations organized in the place of the original corporation.
54 In that case the question submitted to the vote of the people was, whether the stock should be subscribed in a certain specified company, and also whether bonds should be issued to pay for the stock so subscribed.

In the case now under consideration, the single question which the law authorized to be submitted to the voters, and the only question which, as the proof shows, was submitted, was, whether the city of San Antonio should subscribe stock to an amount not exceeding $50,000 in the San Antonio and Mexican Gulf Railroad Company. The vote was in the affirmative. Within a few weeks after the vote, and before there could have been any default on the part of the railroad company, when its charter was conceded to be in full force, the subscription was made. The authority given by the vote of the people was strictly followed, and it was not exceeded a hair's breadth.

In the case of Mark vs. Fulton County, supra, it was held that the bonds were void because the people had voted to take stock and issue bonds to pay for it in one company, and the stock had been subscribed in another, and therefore the bonds to pay for it were issued without authority. But here the vote was simply to subscribe stock. The authority conferred by the vote was strictly followed. The as-
55 sumption that because after the subscription of the stock the railroad company failed to comply with the provisions of its charter, by which its charter was forfeited, therefore the bonds issued after such failure to pay for the stock which had been bought by the city of San Antonio were void, is not borne out by the case of Mark vs. Fulton County.

The claim that the failure of the company to commence work upon its

road within one year worked a forfeiture of its charter so as to release a subscriber of stock from payment, was directly made and overruled in the case of San Antonio vs. Jones, decided by the supreme court of Texas in 28th Texas, 32. In that case, Moore, C. J., says: "We cannot give our assent to this construction of the charter. The provision is not believed to have been intended by the subscribers of stock as part of the essence of the contract among themselves in organizing the corporation, nor as a matter of contract between the individual subscribers and the corporation as an aggregate body. It was doubtless intended by the legislature, and understood by the subscribers, as a reservation and condition attached for the benefit of the public, to secure the speedy construction of an important public work, for the promotion of which many essential and valuable rights had been conceded. It was to protect the State from any future embarrassement by reason of the
56 privileges conferred upon this company, if the road should not be speedily and in good faith commenced and pushed forward to completion. The construction contended for by appellant would enable a discontented subscriber of stock, by withholding the means upon which the company is dependent to perform the requirements of its charter, if not to insure its destruction, to escape at least from many liabilities which he had assumed by becoming a member of it." We think, therefore, that the position that the bonds were void because as the railroad company had, as it was supposed, forfeited its charter before the bonds were issued, cannot be maintained.

4. It is claimed that the bonds issued in payment of the stock subscribed for by the city of San Antonio were without seal, and therefore void. The pleadings aver and the proof shows that when the bonds were issued the city had and used no common seal. The execution of the bonds by the mayor and the secretary of the city council of San Antonio is abundantly proved. The resolution of the city council authorizing them to issue the bonds is also in evidence. The bonds were issued to pay for stock subscribed for and the title to which was transferred to the city. There is nothing in the evidence to show that the city does not hold the stock to this day. Under these circum-
57 stances we think the city of San Antonio is equitably estopped from setting up the want of a seal to her obligations given in payment for property which she has held for more than 20 years, and still holds. (Pendleton Co. vs. Ames, 13 Wall., 297.)

5. It was alleged, and the attempt was made to show, that a majority of the qualified electors did not vote in favor of the subscription by the city to the stock of the railroad company. We think the proof did not sustain the allegation, but even if it did, it could not affect a purchaser, without notice of the fact. (Van Northrup vs. Madison City, 1 Wallace, 297; Gilpcke vs. Dubuque, 1 Wall., 203; Moran v. Community of Miami Co., 2 Black, 722; Mercer County vs. Hackett, 1 Wall., 93.)

We are clear that the mayor and secretary of San Antonio had authority to issue the bonds sued on. This point established, unless it can be shown that the present holder, the plaintiff (who, it is the presumption of law, acquired them before [illegible]turity), was not an innocent holder for value, his title to a recovery is [illegible]plete. In our opinion, the evidence falls very short of showing tha[illegible]laintiff, a citizen of Virginia, was not a bona-fide holder for v[illegible]ets are [illegible]re is no evidence to bring notice to him of any infirmity [illegible]xas, in th[illegible]rer, in the hands
58 San Antonio placed these bonds, pa[illegible]ame of t[illegible]re or want of consideration, one-half of the vigilance and abili[illegible] which has been exerted

[illegible] necessary [illegible] the [illegible] of [illegible] [illegible] [illegible]

61

Bills of exceptions 1 & 2 [illegible] Mehaffey vs. City of San [illegible] Nos. 1 & 2. Filed Feb. 15, 1875. [illegible] as follows, to wit:

Bill of Ex., No. 1.

THO'S J. MEHAFFEY
vs.
CITY OF SAN ANTONIO. } No. 11'. Law.

Be it remembered that, on the trial of the above entitled [illegible] plaintiff having offered in evidence the act entitled "An [illegible] porate the San Antonio Railway Company," approved [illegible] whereupon the defendant objected to its admission, because [illegible] unconstitutional in so far as applicable to this suit, [illegible] vening sec. 24, art. 7, of the constitution of Texas, in the [illegible] spects:

1st. The name of the company in the title of the act [illegible] name of the company as incorporated in the body of [illegible]

62 2nd. Because the purposes of the 12th sec. of this act, [illegible] section is relied on to sustain this suit, are not embraced in [illegible] purposes set forth in the title.

Which objections of defendant were overruled by the court, and [illegible] set admitted. Whereupon defendant excepted, and now presents [illegible] bill of exceptions be allowed, signed, and made a part of the [illegible] which is accordingly done.

W. B. WOODS, [illegible]
Judge.

Bill of Ex., No. 2.

THO'S J. MEHAFFEY
vs.
CITY OF SAN ANTONIO. } No. 1139. Law.

Be it remembered that, on the trial of the above-entitled cause, the plaintiff having offered in evidence the act of the Legislature [illegible] day of Feby, 1862; that of Feby 19th, 1864; that of Feby [illegible] that of Nov'r 14th, 1857; the act to revive and continue [illegible] of Jan'y, 1862, and the act of Feby 1st, 1861; [illegible] introduced to show that the act of 5th of Sept., 1856, [illegible]

63 pired by its limitation, on account of delays [illegible] last revived by the said above-mentioned acts, and [illegible] above-mentioned acts revived the rights of the [illegible] to the bonds in issue, and legalized their issue by the mayor of [illegible] tonio:

Thereupon defendant objected to the admission of the said several acts, because—

1st. The two first of said several acts are [illegible] into sec. 24, art. 7, constitution of Texas, in the [illegible] these acts speak of a railroad by the name of the San Antonio [illegible]

Company, while the body of the acts legislates for a company known as "the San Antonio and Mexican Gulf Railroad Company."

2nd. That none of said several acts do in fact revive, or pretend to revive, the authority of the city corporation to issue the bonds in question, such authority having expired, if it ever existed, under the act of Sept. 5th, 1850, before the first of said several acts was passed.

3rd. That the said act of the 14th of Feb'y, 1852, and all other of the said several acts, if intended by the legislature to revive the authority of the corporation to issue the bonds, would contravene the provisions of said sec. 24th, art. 7, of the constitution of Texas, that purpose not being set forth in the title, nor indeed anywhere in the body of
64 the said acts.

4th. That if said several acts are introduced for any purpose, it can only be to revive a claim against the people of San Antonio, which otherwise would have ceased to have any vitality. Or, in other words, they would, without consulting the people of San Antonio, be a legislative attempt to create a new contract for them by a retroactive act, thus contravening the provisions of sec. 14th, art. 1st, of the State constitution, and sec. 10, art. 1st, of the Constitution of the United States of America, which forbids a State to impair the obligations of a contract.

But the said objections of defendant having been overruled by the court, and the said several acts admitted in evidence, the defendant excepted to such ruling, and now prays that this her bill of exceptions be allowed, signed, and made a part of the record; which is accordingly done.

W. B. WOODS, [SEAL.]
Judge.

65 Bill of exceptions, 3 (endorsed, to wit: No. 1139. Law. Tho's J. Mehaffey vs. City of San Antonio. Bill of exceptions of def't, No. 3. Filed Feb. 15, 1875. M. Hopkins, cl'k), which is in words as follows:

Bill of Ex., No. 3.

In circuit court of U. S. for W. dist. of Texas, January term, 1875.

THO'S J. MEHAFFEY
vs.
CITY OF SAN ANTONIO. } No. 1139. Law.

Be it remembered that, on the trial of the above entitled cause, came on to be heard the pleas in abatement and general and special demurrers and exceptions of def't to the petition and amended petitions of plaintiff, and the same having been considered by the court, were overruled and held for naught.

Whereupon said defendant excepted to such overruling, and now prays that this, her bill of exceptions to such overruling, be allowed, signed, and made a part of the record; which is accordingly done.

W. B. WOODS, [SEAL.]
Judge.

66 Bill of exceptions 4. (Endorsed, to wit: No. 1139. Tho's J. Mehaffey vs. City of San Antonio. Bill of exceptions of defendant No. 4. Filed Feb. 15, 1875. M. Hopkins, cl'k.) Which is in words as follows:

In the U. S. circuit court, W. dist. of Texas, Jan'y term, 1875.

THO'S J. MEHAFFEY
vs.
CITY OF SAN ANTONIO. } No. 1139. Law.

Be it remembered that on the trial of the above cause defendant excepted to the reading of all those portions of the answer to cross-interrogatories on the part of plaintiff of the witness Tho's J. Devine, wherein he says, in answer to cross-interrogatory 1st, "I am satisfied these failures or omissions were cured by subsequent legislation"; and wherein he says, in answer to cross-int. 8th, "I am positive that the bonds referred to were regularly, fairly, and honestly issued and delivered to said company"—his said answers being conclusions of law; and also wherein he elsewhere, in answer to said cross-int's, states conclusions of law.

And be it further remembered that, also on said trial, said defendant excepted to all those parts of the answers to cross-interrogatories
67 of witnesses J. R. Sweet, John James, and Sam. S. Smith, wherein they speak conclusions of law as to the regularity of the issue of the bonds and coupons questioned in this suit.

"But the court, not desiring to pass upon said exceptions to said answers of witnesses during the trial, admitted said answers, subject to the exceptions of defendant, and in passing judgment in said cause the court did not consider said answers so excepted to, nor did the same have any weight or influence in shaping the opinion and judgment of the court. Defendant, at the trial, excepted to the admission of said answers as aforesaid, and prayed that her bill of exceptions be allowed, signed, sealed, and made part of the record, which is accordingly done."

W. B. WOODS, [SEAL.)
Judge.

(NOTE AT REQUEST OF DEF'T'S ATT'YS.—From the word "but," in 5th line, to signature, in handwriting of Hon. W. B. Woods.)

68 . The following is the statement of facts (endorsed, to wit: 1139. Thomas J. Mehaffey vs. City of San Antonio. Statement of facts. Filed Feb. 15, 1875. M. Hopkins, cl'k), which is in words as follows:

In circuit court of U. S. for western dist. of Texas, Jan'y term, 1875.

THOMAS J. MEHAFFEY
vs.
CITY OF SAN ANTONIO. } No. 1139. Law.

Be it remembered that on the trial of the above entitled and numbered cause at said January term, 1875, of said court, the following documentary evidence, depositions, and acts of the legislature of Texas were offered in evidence by the respective parties, and admitted by the court, viz:

1st. Plaintiff offered in evidence the act of the legislature of Texas of Sept'r 5th, 1850, entitled an act to incorporate the San Antonio Railroad Company, under the 12th section of which he claimed that his demand arose. Defendant excepted (see bill of exceptions of city of San Antonio, No. 1); but the act was admitted and read, as follows:

69 An act to incorporate the San Antonio Railroad Company.

SECTION 1. Be it enacted by the legislature of the State of Texas, That S. A. Maverick, Gideon Lee, L. G. Copers, John D. Groesbeck, Nathaniel Lewes, I. A. Paschal, Tho's J. Devine, Francis Gillean, Tho's J. Pevrinan, B. Calighan, J. J. Giddings, Volney E. Howard, John James, B. E. Edwards, John Twohig, Ludwig Calgahoun, J. O. Mensebach, O. Evans, J. H. Beck, Robert S. Neighbors, O. Lockwood, W. H. Merriwether, Enoch Jones, and their associates and successors, be, and they are hereby, enacted and established a body corporate and politic, under the name of the San Antonio and Mexican Gulf Railroad, with capacity in said corporate name to make contracts, to have succession and a common seal, to make by-laws for the government and the regulation of the affairs, to sue and be sued, to plead and to be impleaded, to grant and receive, and generally to do and perform all such act', as may be necessary or proper for, or incident to, the fulfilment of the obligation or maintenance of its rights under this act, and in accordance with the constitution of the State.

SEC. 2. That the said company be, and is hereby, invested with the rights of locating, con'tructing, owning, and maintaining a rail-
70 way, commencing at any suitable point on the Gulf between Galveston and Corpus Christi, and thence running by such course and to such point at or near the city of San Antonio as said company may deem most suitable, with the priviledge of making, owning, and maintaining such branches of said railway as they may deem most expedient.

SEC. 3. That the parties named in this act, or a majority of them, with such persons as they may associate with themselves for this purpose, are hereby appointed commissioners, and invested with the rights of forming and organizing said company, and of exercising the powers of directors, until directors are chosen, when the powers of the commissioners shall cease.

SEC. 4. That the capital stock of said company shall be divided into shares of one hundred dollars each; each share entitling the owner thereof to one vote in person, or by proxy, at all meetings of the company, and the shares shall be deemed personal estate, and shall be transferable by any conveyance in writing, recorded either by the treasurer, in books kept by him for that purpose at his office, or by any officer duly authorized by the directors, in books kept by him at such other place as the directors may appoint, such transfers as are recorded
71 in any other place being within thirty days communicated to the treasurer, and by him entered on his books.

SEC. 5. The immediate control and direction of the affairs of the company shall be vested in a board of not less than thirteen directors; said directors shall elect one of their own number to be president of the company; the first board of directors shall be chosen by the persons named in this act, and such persons as they may associate with themselves for that purpose; said election shall be held in the city of San Antonio, and at such time as the persons named in this act, or a majority of them with their associates shall determine, the directors thus elected by the stockholders; no person shall (be) eligible to the office of director unless a subscriber or owner of at least three shares of the capital stock; the directors shall have power to fill any vacancy in their body arising from non-election or other cause; they shall have power to appoint a clerk, treasurer, or any such other officers or agents as they may deem necessary, and prescribe and require bonds for the faithful performance of their duties; they may make all necessary rules and regulations for the

holding of meetings, and all other lawful things they may deem
72 proper for the carrying out the provisions of this charter, and business of the company; they shall keep, or cause to be kept, correct records of all meetings of the directors and company, and accurate books and accounts of the receipts and expenditures of the company, and all other books and accounts necessary and proper to be kept by such a company; a majority of the board of directors shall have the power of a full board, and all conveyances and contracts executed in writing, signed by the president, and countersigned by the treasurer, or any other officer duly authorized by the directors, under the seal of the company, and in pursuance of a vote of the directors, shall be valid and binding; and the books shall be open to inspection of stockholders.

SEC. 6. That the directors shall have power to dispose of the shares in said capital stock, in such manner and on such terms as they may deem best for the interest of the company; and any agreement in writing whereby any person shall become a subscriber to the capital stock of said company, may be enforced against him according to its terms; if any subscriber shall fail to pay any amount due upon shares
73 subscribed for by him according to the terms of his subscription, the directors may, after twenty days' public notice, sell at public auction the share subscribed for by said delinquents, and transfer the purchaser such shares; if the proceeds of the sale shall not be sufficient to pay the amount due with interest and charges, such delinquent shall be held liable to the company for the deficiency, and if the proceeds exceed the amount so due, with interest and charges, he shall be entitled to the surplus.

SEC. 7. It shall be lawful for the company to purchase and hold any land that may be necessary for the purpose of locating, constituting, and maintaining said railway; with all necessary depots and other buildings, and may, by their engineers or agents, enter upon and take possession of all such lands as may be necessary for the locating, constructing, and maintaining said railway; and if they shall not be able to obtain said land by agreement with the owner, they shall pay for the same such amount as shall be determined in the manner provided for in the following section; the land so taken for the railroad shall not exceed fifty yards in width, and for depots and buildings, only such further width as may be necessary.

SEC. 8. That any person from whom land has been taken for
74 the purpose set forth in the preceding section, may apply to the district court of the county wherein said land is situated, for the appointment of appraisers, and said court after proof that the president of the company has been served with a notice, describing the land, ten days before the holding of the court, the court shall thereupon appoint three disinterested freeholders, citizens of the county, who shall appoint a time and place to hear the application; and the company to whose agent or president a reasonable notice shall be given by the court of said time and place, and said freeholders after being sworn, shall, after hearing the parties, determine the amount of compensation as aforesaid, and make return of their award to said court at its next term, and said award may be confirmed, or for any sufficient reason rejected by said court in same manner as awards by arbitrators, under a rule of court, and if confirmed by the court, judgment shall issue thereon as in other cases; in determining the amount of compensation be paid as aforesaid, freeholders shall be governed by the actual value of the land at the time it was taken, taking into consideration the benefit or injury
75 done to other neighboring of the owner by the establishment

said railway; if in any case the amount found by the arbitrators shall not exceed the sum proved to have been offered by the company to the owner prior to his application to the court, the owner shall pay the cost of the proceedings; otherwise the company shall pay the same.

SEC. 9. That said company may acquire by purchase, donation, or in payment of stock, such real estate as the directors shall think desirable for the purpose of aiding in the construction or maintenance of said road, and such real estate acquired by the company may be alienated or mortgaged by a vote of the majority of the directors, for the construction or maintaining said railway; said alienation or mortgage shall be signed in the name of the president and countersigned by the treasurer.

SEC. 10. That said company shall have power to borrow money on their bonds or notes at such rate as the directors shall deem expedient; provided, however, that nothing in this act shall be construed to confer banking privileges of any kind.

SEC. 11. That upon the written request of one-fourth of the
76 stockholders the president of the company shall call a special meeting of the directors; and upon the written request of said one-fourth of the stockholders an election shall be held for directors; and a vote of two-thirds of the stockholders shall be sufficient to remove the directors and appoint others in their stead at any time before the expiration of the period for which said directors were originally elected.

SEC. 12. That the mayor and aldermen of the city of San Antonio be, and they are hereby, authorized to subscribe to the capital stock of said company for said city, to an amount not to exceed fifty thousand dollars, as also such incorporate towns through which said railway may pass, inclusive of the town, if any, that may be its terminus on the Gulf, and to issue bonds bearing interest, or otherwise to pledge the faith of said city or towns to pay for the same; and the chief justice and county commissioners of the several counties through which the railway may pass, shall be, and they are hereby, authorized to subscribe to the capital stock of said company for their respective counties to an amount not to exceed fifty thousand dollars, and to issue bonds bearing interest, or otherwise to pledge the faith of
77 their respective counties to pay the same; provided that the chief justice and county commissioners of said counties shall not make such subscription unless two-thirds of the qualified electors of said county or counties, at an election to be held for that purpose, shall vote in favor of such subscription being made; and the chief justice of any such counties may order such election to be held, and shall give notice of the time and object of such election, by causing notice thereof to be posted up in each precinct of the county at least thirty days before the holding of such election; said election to be conducted in the manner regulating county elections, so far as the same may be applicable; provided, also, that said mayor and aldermen of the city of San Antonio and the towns upon the line and at the terminus of said railway on the Gulf, shall not make such subscriptions unless two-thirds of the electors of said city or town qualified to vote for town or city officers, at an election *at an election* to be held for that purpose, shall vote in favor of such subscription being made; and the mayor of said city or town may order such an election to be held, and shall give
78 notice by publication in the newspaper published in the city or town, or by notice posted up in the precints of said city or town, for at least twenty days previous to such election being held; and said election shall be conducted in the same manner regulating the respect-

ive city or town elections so far as the same may be applicable; provided, further, that where any such subscription shall be made, and bonds therefor be issued, by the mayor and aldermen of any of said towns or city, or by the chief justice and county commissioners of any of said counties, it shall be their duty, respectively, to provide for the punctual payment of the interest that may from time to time become due upon the same, and for the payment of the principal thereof by levying and collecting a tax on the real and personal property in the city, town or county, for which said subscriptton shall be made and bonds issued, which tax shall not be less than ten cents nor more than fifty cents on each and every one hundred dollars taxable property in said city, town, or county, and shall be assessed and collected and paid into the treasury of said city, town, or counties by which it is levied
79 in the same manner the city or county tax in such city or towns or counties is assessed and collected, which tax shall be continued from year to year until the whole amount of the principal and interest due on said bonds shall have been fully paid and discharged; and when collected, after deducting therefrom the expenses of assessing and collecting shall first be applied to the payment of interest due on such bonds and the remainder shall be applied to the payment of the principal on such bonds.

SEC. 13. That all dividends on the capital stock of said railway company that may accrue to said city, towns, or either of said counties, shall be appropriated to the payment of the principal and interest of any bonds that may be owing by them respectively and that may have been executed under the provisions of this act, until the whole of said principal and interest shall have been discharged; and the said railway company is hereby authorized to pay the same accordingly.

SEC. 14. That it shall be the duty of said company, whenever any State or county road now established shall be crossed by said railway, to make and keep in repair good and sufficient causeways at such
80 crossing; and in all cases where any person shall own lands on both sides of the railway, and there shall be no other convenient access from one point to the other, such owner shall have the right of passage free of cost, at all reasonable times, crossing said railway, and if said company shall cross any navigable stream, they shall not interfere with the navigation of the same.

SEC. 15. That if any person shall negligently or designedly injure or destroy any of the fixtures, buildings, machines, or improvements of said company, or any portion of the railway or its branches, he shall be liable to indictment for such offence or offences, and, upon conviction, he shall be punished by fine and imprisonment, at the discretion of the court, and shall also be liable to the company in addition for damages.

SEC. 16. That said company shall have the right to charge and receive such rates and prices for the transportation of passengers and freight as shall not exceed eight cents per mile for passengers, and for freight not exceeding seventy-five cents per one hundred pounds for every hundred miles the same may be carried: Provided, however, that the State shall have the right to regulate the charge for carrying the mails.

81 SEC. 17. That the company shall, after the completion of the railway, sell and alienate all lands held by said company, save such as shall be necessary for the maintenance of the railway, within the following periods: One-third of said lands within five years, one-third within ten years, and the remainder within fifteen years after the completion of said railway, and on failure by the company to alienate

within the time limited, the comptroller of the State may, after public notice in a newspaper published at the seat of government and in the counties where the land may lie, cause said land to be publicly sold for cash, the proceeds of said sale, after deducting expenses of sale, to be paid to the authorized agents of the company.

SEC. 18. That if said railway is not completed within one year from the 1st of November, 1850, and if at least twenty miles are not in running order within three years from its commencement, then this charter shall be null and void.

Approved September 5th, 1850.

82 2d. Plaintiff read agreed copy, marked "A," of proceedings of corporation of San Antonio, taken in case No. 1172, R. S. Gould vs. City of San Antonio, and accepted in this case by consent as true copy, as follows:

(Copy.)

(B. A., page 113.)

Regular meeting city council, Dec. 4th, 1850.

M'r Evans introduced the following resolution, which was adopted:

Resolved, That whereas by the 12th section of the act incorporating the San Antonio and Mexican Gulf Railroad Company the mayor and aldermen of the city of San Antonio are authorized to subscribe (on behalf of said city) to the capital stock of said company to an amount not to exceed fifty thousand dollars, should the vote of two-thirds of the qualified electors of San Antonio be in favor of the measure; with a view, therefore, of ascertaining the wishes of the qualified electors on the question of the city of San Antonio subscribing fifty thousand dollars to the capital stock of said company:

Be it resolved by the mayor and board of aldermen of the city of San Antonio in council assembled, That the mayor cause public notice to be given (at least twenty days before) of an election to be held on the last Monday in December, inst., for the purpose of taking the votes of the qualified electors of San Antonio on the question of subscription, the vote to be taken at the same time, and to be governed
83 by the same rules as prevail in the election of city officers.

Be it further resolved, That those in favor of subscription shall write or insert on their tickets "In favor of subscription," and those opposed to the measure shall write or insert on their tickets "Opposed to subscription."

Attest:

E. NAVARRO, *C. C.*

At an election held on the 30th day of December, 1850—being the last Monday in said month—at the city hall of the city of San Antonio, in pursuance of a writ of election issued by the mayor of said city, J. M. Devine, mayor presiding, proceeded to administer the proper oaths to the clerks, and then declared the polls open for the reception of votes. Upon closing the polls at o'clock p. m., the following result was exhibited:

For subscribing $50,000 to railroad stock:

In favor, 253 votes (two hundred & fifty-three).

Against, 3 "

Attest:

E. NAVARRO, *C. C.*

Suit pending in the circuit court of the United States for the western district of Texas.

R. S. GOULD
vs.
CITY OF SAN ANTONIO.

84 It is hereby agreed that the foregoing two leaves are copies from the records of the city of San Antonio, and that they or either of them may be used in evidence on the trial of the above-entitled cause, the same as and in place of the original records.

It is further agreed that the said copies may, in like manner, be used as evidence in the case of J. C. Barnes vs. The City of San Antonio, which case is also pending in the same court.

Notice to produce the original record is waived in both of said cases.

WAELDER & UPSON,
Att'ys for R. S. Gould and J. C. Barnes.

DAVIS & MURPHY AND T. S. HARRISON,
By T. S. HARRISON,
Att'ys for Defendant.

3d. Plaintiff read the interrogatories to and answers of F. L. Paschal and Sam. S. Smith, filed in the said case No. 1172, February 12th, 1872, as follows:

85 Suit pending in the circuit court of the United States for the western district of Texas.

R. S. GOULD
vs.
CITY OF SAN ANTONIO.

Interrogatories to be propounded to Thomas J. Devine, Samuel S. Smith, and F. L. Paschal, witnesses for the plaintiff in the above-entitled cause.

Interrogatory 1st. How long have you and each of you been residents of the city of San Antonio?

Int. 2. Have you, at any time since you have been residents of said city, been connected with the municipal government of said city? If so, when, in what year or years, and in what capacity were you so connected?

Int. 3. If you were not connected with said city government as officers or employees, then state whether you were acquainted with the administration of the affairs of said city during the years 1860, 1861, and 1862, and state also how you became acquainted with said administration.

Int. 4. How were the contracts of said city, and all agreements made by it, executed during the years 1860, 1861, and 1862? Did said
86 city contract with or without a corporate seal? Did or not said city have and use a corporate seal during said years, or at any time during said years? You will please state when said city first commenced using a corporate seal, whether before the time you may state said city ever had or used a corporate seal; and, if no such seal was used by said city, why was it not used.

Int. 5. You will please state all you know with reference to said city having or using a corporate seal during the years aforesaid, together with your means of information.

Int. 6. Who was the mayor of the city of San Antonio in the year 1852, and acting as such during that year? If you give the name of the person who was then mayor, then state how he became so, whether he was elected or appointed, when, and what his term of office was. State how long such person was mayor, from what time to what time.

WAELDER & UPSON,
Att'ys for P'ff.

SAN ANTONIO, *January* 26*th*, 1872.

Service of foregoing interrogatories accepted, notice and commis-
87 sion waived, and it is agreed that the answers thereto may be taken before any officer authorized to take depositions under the laws of the State.

WILH. C. A. THRELEPOPE,
Mayor City of San Antonio.
DAVIS & MURPHY AND T. S. HARRISON,
Att'ys for Defendant,
By T. S. HARRISON.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared F. L. Paschal, of said county, to me well known, who, being by me duly sworn to true answer make to the interrogatories propounded to him in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff, and the City of San Antonio is defendant, responds as follows, to wit:

To int. 1st. I resided in San Antonio from 1838.

To int. 2nd. I have. From January 1st, 1850, to Jan. 1st, 1852, I was an alderman of the city of San Antonio.

To int. 3rd. As stated before, I was an alderman.

To int. 4th. They were made by the mayor and aldermen, the mayor signing the contracts, etc. When I was an alderman no seal was
88 used up to 1852, to the best of my knowledge. As stated, they did not. My impression is, in the year 1856. I do not think the city had a seal before.

To int. 5th. I have answered and explained all I know.

To int. 6th. Ch's F. King. He was elected at regular election in Dec'b'r, 1851, as mayor for 1852, to serve for twelve months; he was mayor from Jan. 1st, 1852, to Jan. 1st, 1853.

F. L. PASCHAL.

THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature that the foregoing answers of the witness F. L. Paschal were taken, sworn to, and subscribed before me this 30th day of January, A. D. 1872.

[L. S.]
JULIUS HOYER,
Not. Pub. Bexar Co.

At the same time and place, this day personally appeared Sam'l S. Smith, to me well known, who, being duly sworn as in caption, under oath says:

To int. 1st. I came in the early part 1843, and have resided here ever since.

To int. 2nd. I was an alderman in the [illegible] city treasurer in 1847, elected by [illegible]
89 tem. also in 1847 and '48, in the [illegible]
To int. 3rd. I was connected, as [illegible] counected was well acquainted with the [illegible] said city.

To int. 4th. By the signature of the mayor without seal. [illegible] were made always without a corporate seal, and deeds and other [illegible] ments also without seal. At that time the city [illegible] The first corporate seal was used by said city after the [illegible] charter of 1856; before 1856 no corporate seal was [illegible]

To int. 5th. This is already answered, except that [illegible] was secretary of the council, and know from my connection [illegible] porate seal was had or used. I also was county clerk of Bexar County from August, 1850, to the fall of 1855, consecutively, and recorded many contracts, deeds, and other instruments of said city, and know that no seal was used until 1856.

To int. 6th. Ch's F. King was elected for and acted during the year 1852 as mayor of the city. He was elected in December, 1851, by the people to serve during the year 1852, and did serve, and for which year I was elected and served as city treasurer. King served as mayor in 1847 & '48, and in 1852.

SAM'L S. SMITH.

90 THE STATE OF TEXAS,
County of Bexar:

I certify, under my official seal and signature, that the foregoing answers of the witness Sam'l S. Smith were taken, sworn to, and subscribed before me this 30th day of January, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub. Bexar Co.

4th. Plaintiff read the bonds and coupons described in his petition, as follows:

91 No. 3.] [No. 3.

THE STATE OF TEXAS, CITY OF SAN ANTONIO, SEVEN PER CENT. BONDS.

$1,000.] [$1,000.

This is to certify that the corporation of the city of San Antonio is indebted to the president and directors of the San Antonio and Mexican Gulf Railroad Company, or bearer, the sum of one thousand dollars, redeemable after the 1st day of March, A. D. 1872, with interest at seven per centum per annum, payable semi-annually, on the first days of March and September in each year, at the office of the treasurer of the city of San Antonio, on presentation and surrender of the proper coupon hereto annexed.

This debt is authorized by a vote of the electors of the city of San Antonio, taken in accordance with the provision of an "Act to incorporate the San Antonio and Mexican Gulf Railroad Company," approved September 5, 1850.

Entered and recorded in the office of the city treasurer, and is transferable on delivery.

City Hall, city of San Antonio, March 1st, 1852.

C. F. KING, *Mayor.*

P. S. BUQUOR,
Secretary City of San Antonio.

22 Coupons attached:

40.] CITY OF SAN ANTONIO BONDS. [40.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1872, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

39.] CITY OF SAN ANTONIO BONDS. [39.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1871, on bond No. 3, for $1,000.

C. F. KING, *Mayor.*

38.] CITY OF SAN ANTONIO. [38.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1871, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

37.] CITY OF SAN ANTONIO BONDS. [37.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1870, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

36.] CITY OF SAN ANTONIO BONDS. [36.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1870, upon bond No. 3, for $1,000.

C. F. KING, *Mayor.*

No. 4.] [No. 4.

23 THE STATE OF TEXAS, CITY OF SAN ANTONIO, SEVEN PER CENT. BONDS.

$1,000.] [$1,000.

This is to certify that the corporation of the city of San Antonio is indebted to the president and directors of the San Antonio and Mexican Gulf Railroad Company, or bearer, the sum of one thousand dollars, redeemable after the 1st. day of March, A. D. 1872, with interest at seven per centum per annum, payable semi-annually on the first day of March and September in each year, at the office of the treasurer of the city of San Antonio, on presentation and surrender of the proper coupon hereto annexed.

This debt is authorized by a vote of the electors of the city of San Antonio, taken in accordance with the provisions of an "act to incorporate the San Antonio and Mexican Gulf Railroad Company," approved September 5, 1850.

Entered and recorded in the office of the city treasurer, and is transferable on delivery.

City Hall, city of San Antonio, March 1st, 1852.

C. F. KING, *Mayor.*

P. S. BUQUOR,
Secretary, City of San Antonio.

Coupons attached:

94 40.] CITY OF SAN ANTONIO BONDS. [40.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st of March, 1872, upon bond No. 4 for $1,000.
O. F. KING, *Mayor.*

39.] CITY OF SAN ANTONIO BONDS. [39.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1871, on bond No. 4, for $1,000.
O. F. KING, *Mayor.*

38.] CITY OF SAN ANTONIO BONDS. [38.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1871, upon bond No. 4, for $1,000.
O. F. KING, *Mayor.*

37.] CITY OF SAN ANTONIO BONDS. [37.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1870, upon bond No. 4, for $1,000.
O. F. KING, *Mayor.*

36.] CITY OF SAN ANTONIO BONDS. [36.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1870, upon bond No. 4, for $1,000.
O. F. KING, *Mayor.*

35.] CITY OF SAN ANTONIO BONDS. 35.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1869, upon bond No. 3, for $1,000.
O. F. KING, *Mayor.*

34.] CITY OF SAN ANTONIO BONDS. [34.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 3, for $1,000.
O. F. KING, *Mayor.*

95 33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1868, upon bond No. 3, for $1,000.
O. F. KING, *Mayor.*

32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 3, for $1,000.
O. F. KING, *Mayor.*

31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

30.] CITY OF SAN ANTONIO BONDS. [30.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1867, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

29.] CITY OF SAN ANTONIO BONDS. [29.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1866, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

28.] CITY OF SAN ANTONIO BONDS. [28.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1866, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

27.] CITY OF SAN ANTONIO BONDS. [27.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1865, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

96 26.] CITY OF SAN ANTONIO BONDS. [26.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1865, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

52.] CITY OF SAN ANTONIO BONDS. [25.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1864, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

24.] CITY OF SAN ANTONIO BONDS. [24.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1864, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

23.] CITY OF SAN ANTONIO BONDS. [23.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1863, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

22.] CITY OF SAN ANTONIO BONDS. [22.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1863, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

21.] CITY OF SAN ANTONIO BONDS. [21.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1862, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

20.] CITY OF SAN ANTONIO BONDS. [20.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1862, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

97 19.] CITY OF SAN ANTONIO BONDS. [19.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1861, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

18.] CITY OF SAN ANTONIO BONDS. [18.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1861, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

17.] CITY OF SAN ANTONIO BONDS. [17.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1860, upon bond No. 3, for $1,000.
C. F. KING, *Mayor.*

35.] CITY OF SAN ANTONIO BONDS. [35.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1869, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

34.] CITY OF SAN ANTONIO BONDS. [34.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1869, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

33.] CITY OF SAN ANTONIO BONDS. [33.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1868, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

32.] CITY OF SAN ANTONIO BONDS. [32.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1868, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

98 31.] CITY OF SAN ANTONIO BONDS. [31.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1867, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

30.] CITY OF SAN ANTONIO BONDS. [30.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1867, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

29.] CITY OF SAN ANTONIO BONDS. [29.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1866, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

28.] CITY OF SAN ANTONIO BONDS. [28.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1866, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

27.] CITY OF SAN ANTONIO BONDS. [27.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1865, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

26.] CITY OF SAN ANTONIO BONDS. [26.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1865, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

25.] CITY OF SAN ANTONIO BONDS. [25.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1864, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

99 24.] CITY OF SAN ANTONIO BONDS. [24.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1864, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

23.] CITY OF SAN ANTONIO BONDS. [23.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1863, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

22.] CITY OF SAN ANTONIO BONDS. [22.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1863, upon bond No. 4, for $1,000.
C. F. KING, *Mayor.*

21.] CITY OF SAN ANTONIO BONDS. [21.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1862, upon bond No. 4, for $1,000.
C. F. KING, Mayor.

20.] CITY OF SAN ANTONIO BONDS. [20.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1862, upon bond No. 4, for $1,000.
C. F. KING, Mayor.

19.] CITY OF SAN ANTONIO BONDS. [19.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1861, upon bond No. 4, for $1,000.
C. F. KING, Mayor.

18.] CITY OF SAN ANTONIO BONDS. [18.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st March, 1861, upon bond No. 4, for $1,000.
C. F. KING, Mayor.

100 17.] CITY OF SAN ANTONIO BONDS. [17.

Due from the city of San Antonio to bearer thirty-five dollars, for six months' interest, due 1st September, 1860, upon bond No. 4, for $1,000.
C. F. KING, Mayor.

101 5th. Plaintiff read agreed copy, marked "B," of proceedings of said corporation of San Antonio, also taken in said cause No. 1172, but used by consent, as true copy, for this case; Plaintiff rested as his evidence from 1st to 4th pages, inclusive, of said copy, as follows:

(Copy.)

(Book A, page 148.)

Call meeting of city council, Dec. 31st, 1851.

The returns of the last election being opened, the mayor declared that C. F. King had received the highest number of votes for mayor, viz: 161 votes, and that for aldermen, those who had received the highest number of votes were I. H. Urrutia, H. Huffmeyer, A. A. Fuchs, H. D. Stramberg, R. Herreon, J. B. Sweet, Peter Adae, and B. G. Clinton; for city collector, C. B. Lyth received 200 votes, being a majority; and for city treasurer, Sam. S. Smith received 215 votes, being also a majority; and the said above-named persons were declared duly elected to fill said offices for the year 1852.

On motion of Mr Girand, board adjourned.

BEN. R. EDWARDS,
Secretary of the City Council for the Year 1851.

Copy.
R. NAVARRO, *C. C.*

102 An ordinance authorizing the mayor to subscribe, on the part of the city, for fifty thousand dollars of the capital stock of the San Antonio and Mexican Gulf Railroad Company.

Whereas the entire vote of the citizens of San Antonio (save three) has been given in favor of the city taking the amount of stock in the San Antonio and Mexican Gulf Railroad Company, which the charter of said company authorize to be taken by the corporate authorities of this city. Inasmuch, therefore, as the best interest require that all aid be given by this corporation that can be legally extended to this enterprise: Therefore,

Be it ordained and decreed by the mayor and aldermen of the city of San Antonio, in common council assembled, That the mayor be, and he is hereby, authorized and required to subscribe in the book of subscription of said railroad company, in the name and for the benefit of said city of San Antonio, the amount of stock which this city is by the 12th section of said railroad charter entited to take, that is to say, for stock of said company, to the amount of fifty thousand dollars ($50,000).

Passed February 24th, 1851.

BEN. E. EDWARDS,
Sec.

Copied by—
E. NAVARRO, *C. C.*

103 A resolution providing for the levy of a city tax to satisfy the interest of railroad stock.

Be it resolved by the mayor and board of aldermen of the city of San Antonio, in common council assembled, that a city tax of one-fifth of one p'r cent. on all real and personal property be levied for the present year, to meet from time to time the interest on the capital-stock subscription to the San Antonio and Mexican Gulf Railroad Company.

Approved April 26th, 1852.

C. F. KING,
Mayor.

P. L. BUQUOR,
Sec.

Copy.
E. NAVARRO, *C. C.*

A resolution to provide for the issuing of the city bonds to the San Antonio & Mexican Gulf Railroad Company for the amount of subscription of said city.

Be it resolved by the mayor and board of aldermen, in common council assembled, That the mayor be, and he is hereby, required to issue the bonds of the city of San Antonio, to the amount of fifty thousand dollars, payable twenty years after date and bearing interest at the
104 rate of seven per centum per annum, payable semi-annually out of the city treasury, the city reserving the privilege of redeeming the said bonds at an earlier date should they deem it advisable, it being the subscription of the city of San Antonio to the capital stock of the San Antonio and Mexican Gulf Railroad Company, said bonds to be issued whenever they may be required in accordance with the 13th

section of an act to incorporate the San Antonio and Mexican Gulf Railroad Company, approved September 5th, 1850.

Approved, April 26th, 1852.

C. F. KING, Mayor.

P. L. BUQUOR, *Sec.*

Copy. Attest:
E. NAVARRO, *C. C.*

Plaintiff here rested his case.

1st. Defendant then offered and read the part of 5th page of above agreed copy of proceedings of corporation of San Antonio, marked "B," from the commencement of said 5th page, down to and including the words "of the city council," on the 14th line of said page, as follows:

(Book B, page 99.)

Adjourned meeting city council, Dec. 9th, 1857.

105 M'r Ja's E. Gardner, Ch. F. Com., offered the following resolution, which was adopted, viz:

"Be it resolved by the city council of the city of San Antonio, That the communication of the president of the San Antonio and Mexican Gulf Railroad Company, withdrawing the proposition of said company, made in January, 1855, to cancel the subscription of the city to the capital stock of said company, the bonds of the city issued and delivered in payment for said stock to be delivered up to the city, be received and spread upon the minutes of the city council."

2. Defendant then read the depositions or answers to interrogatories of Nat. Lewis, Thomas J. Devine, John James, and Sam. S. Smith, which depositions or answers were filed in said case, No. 1172, but are used as if taken in this case by agreement, as follows:

106 *Depositions of Nat. Lewis, T. J. Devine, John James, and Sam. S. Smith.*

Interrogatories and cross-interrogatories propounded to witnesses, Tho's J. Devine, S. S. Smith, J. R. Sweet, John James, M. L. Merrick, and Nat. Lewis, which are in words following:

Suit pending in the circuit court of the United States for the western district of Texas.

R. S. GOULD
vs.
CITY OF SAN ANTONIO.

Interrogatories to be propounded to Tho's J. Devine, S. S. Smith, J. R. Sweet, John James, M. L. Merrick, and Nat. Lewis, witnesses for defendant, in the above entitled cause.

Interrogatory 1st. How long have each of you been residents of the city of San Antonio?

Interrog. 2nd. Have you or not been acquainted with the municipal government of said city since 1850, and are you, to any extent, familiar with the history of the San Antonio and Mexican Gulf Railroad Compa-

ny, and with the management of the same? If you answer yes, state if said road was commenced within one year after the 1st of November, 1850. If so, where, what was done, how many miles of said road were completed within three years after 1st day of November, 1850, and whether twenty miles were ever completed under said company, and how much, and when, and where?

107 Interrogatory 3rd. If, in answer to the last interrogatory, you state that the construction of said railroad was not commenced within one year after the 1st day of November, 1850, and that twenty miles of said road were not completed within three years after the 1st day of November, 1850, then state the extent that these facts were known, and whether or not they were publicly known at that time. State fully in what manner and by what means these facts were made known. State, also, what action, if any, was taken by the municipal authorities of San Antonio, after the expiration of said three years from Nov. 1st, 1850, and were such actions publicly and generally known, and by what means.

Interrog. 4th. State whether or not any election was ever held in said city for the sole purpose of ascertaining whether said city would subscribe for stock in said company in exchange for city bonds and coupons. If you answer no, then state if said proposition was not voted upon, if ever, at the time of the regular city election, and in what year, and what amount of stock, if any, was proposed to be subscribed, and was such stock ever issued to said city of San Antonio; how many

108 days' notice of such election was given, and by what means. Was the object of such election generally known? Were or not all the electors of said city permitted to vote by the terms of said election notice? If not, from what cause or causes were they refused?

Interrog. 5th. State, if you know, what number of votes was cast at such election, or purported election, for subscribing for stock to said railroad company, and for issuing bonds thereto or therefor. State also what number of voters there were in the city at that time, or qualified electors.

Interrog. 6th. If, in answer to former interrogatories, you are able to state any circumstances in relation to the manner of giving or publishing notice of and holding such election, and the number of votes cast for such subscription of stock or issuing of bonds and coupons, state the extent to which the circumstances mentioned by you were known, and whether they were publicly and generally known; state fully and particularly how and the extent to which these circumstances, or any of them, were known.

Interrog. 7th. Did or not the San Antonio and Mexican Gulf Railroad Company ever, within your knowledge, issue any stock to

109 the said city of San Antonio, in exchange for said bonds and coupons, purported to have been issued by said city?

Interrog. 8th. If you, in the answer to the foregoing interrogatories, say that bonds and coupons were ever issued by the city to said railroad company, at what time were they issued; and was ever an attempt made to place said bonds in the market in New York or elsewhere, and when and by whom? Were they ever of any value? If so, of how much value at that time? If you say they could not get a place on the stock market or exchange, what was the reason? Were or not the previous acts and doings between the city of San Antonio and said railroad company relating to the issue of said bonds and coupons well known in New York City at that time, and what confidence was had in regard to the same? And after this time did said bonds ever increase in value,

or did they decrease in value, or were they or not of any value ever after?

Interrog. 9th. Up to what date were said bonds still in the hands of said railroad company, and when were they taken away, and under what circumstances, and by whom?

DAVIS & MURPHY, AND
T. S. HARRISON, AND
E. G. HUSTON,
Att'ys for Defendant.

110 In the circuit court for the western district of Texas.

R. S. GOULD
vs.
CITY OF SAN ANTONIO.

Cross-interrogatories to be propounded to Thomas J. Devine, S. S. Smith, J. R. Sweet, John James, M. L. Merrick, and Nat. Lewis, witnesses for the defendant.

1st. If, in answer to the second interrogatory-in-chief, you say that you have been acquainted with the municipal government of the city of San Antonio, and familiar with the history of the said Antonio and Mexican Gulf Railroad Company, then state also whether and how you were connected with said municipal government. Did you ever hold any office or employment under said municipal government? If so, what office or employment did you hold, and when? Were you connected at any time with the said railroad company? If so, in what capacity? Were you an officer, director, or employee of said company? When, how long, and what were your duties? Did you have any contract with said company? If so, when and what was your contract with said company? When was it entered into, and what were you to do under it? Was the city of San Antonio a stockholder of said
111 company? If so, to what amount? Was its stock paid up, and how? Did said city have any special director in the board of directors of said company, and who was the director specially representing said city? Was not the mayor of said city always a director, and was not said city one of the largest and principal stockholders of said company? Did not the city of San Antonio and county of Bexar own most of the stock of said company? If you say that said company did not commence its road within one year after the 1st of November, 1850, and that twenty miles were not completed within three years from said date, then please state also what you may know of the extension or revival of its charter, and the extention of time by the legislature.

If you state that the matters alluded to in the third interrogatory-in-chief, or any of them, were known, then you will also state to whom they were known; how many persons were informed of them; by whom and in what manner? When did you become acquainted with them, and how? If you speak of any action taken by the municipal authorities of San Antonio, then state also how said action was taken; whether by resolution, ordinance, or in any other manner, and if
112 by resolution, or in any other manner, by a meeting of the board of aldermen, was not such action recorded in the minutes and upon their books?

3. Were not the notices, returns, and other proceedings connected with the election alluded to in the 4th interrogatory-in-chief in writing,

and were they not recorded in the books and records of said city? Was not the stock of the city of San Antonio entered upon the stock-books of said railroad company with the stock of any other stockholder? Was not the stock of the city subscribed by the mayor in the same manner in which other stockholders subscribed their stock, and was not this subscription on the part of the city made after the election by the people upon the question of subscribing? If you say that not all the electors of said city were permitted to vote, how and by whom they were not permitted to vote; whether you were present at the election, and who was refused a vote. State the names of the qualified voters whose votes were refused, so far as you can, and state the number of qualified electors whose votes you saw refused at said election.

113 Do you know that the election was fairly and honestly conducted? Were not the votes of all qualified voters who offered to vote received?

4. Were the number of votes cast at the election returned in writing, and were they recorded in the books and records of said city? Did you yourself see the election returns or count the ballots? If you undertake to give the number of voters in the city at that time, what means had you of ascertaining that number? Do you speak from actual knowledge or do you estimate the number. If from actual knowledge, how was that obtained; if you estimate, upon what is your estimate based?

5. If you say, in answer to the 6th interrogatory, that any of the circumstances referred to in said interrogatory were known, you will now state what particular circumstances were known, to whom they were known, when and how you know they were known. Did you communicate them, or any of them, to any person or persons; if so, when, where, and how, to what person or persons, and to how many persons? Please state fully and particularly.

114 6. If, in answer to the 7th interrogatory-in-chief, you speak of the manner in which the stock subscription of said city was made and in which the bonds and coupons were issued, you will then state also whether the city did not subscribe its stock like all other stockholders. Was not the stock-subscription by said city made fairly and honestly, and were not the bonds of said city fairly and honestly issued, and in payment of its stock? Do you not know that this was so?

7. If you say, in answer to the 8th interrogatory-in-chief, that an attempt was made to place said bonds in the market in New York, then please state whether you were present when such attempt was made. When was the attempt made and by whom? If you, or any one of you, was present when such attempt was made, in what capacity was the person acting who made the attempt? Was he an officer of the city? For what purpose was the attempt made? In what month and year was it made, and to whom and to how many persons were said bonds offered?

115 If you speak of the value of the bonds, then state what were the means and resources of the city to pay the same. Were these not abundant to pay all its liabilities, including these bonds? If you say that the "previous acts and doings between the city of San Antonio and said railroad company relating to the issue of said bonds were well known in New York City at that time," then you will now state specifically what acts and doings were known in New York City. To whom were they known? How do you know they were known? State the persons by name to whom they were known and what was known to them. If you cannot name the persons, to what number were they known? How often have you been in New York City since the year

1850, and when were you there? Name each and every time, if any, since the year 1850. How long were you there? Did you hear the matter of these bonds spoken of in the streets of New York, or at any place in New York publicly? To how many persons did you speak of these bonds in New York City; when; at what particular time and place? State the names and number of persons to whom you spoke of them, who was present, and at what place or places you spoke of them. Were not all your conversations in relation to these bonds,
116 if you have had any such conversations, with private persons and in private places? Can you say of your own knowledge that the New York public had any knowledge at all of the San Antonio & Mexican Gulf Railroad and its transactions with the city of San Antonio; if so, what did they know? If any knowledge of said railroad and its transactions with said city was had in New York, was it not confined to a very few persons?

8. If you speak of the time at which said bonds were still in the hands of the railroad company, then you will also state whether they were not regularly, fairly, and honestly issued and delivered to said company, and the time when. Were they ever, at any time, &c., delivered to the city? Did they not remain in the hands of the said company, or under its control, from the time they were delivered until they were negotiated by them or their agents? Did not the railroad company elect a new president in 1856, and were not the hopes of the people as to the building of the road revived at that time? Did not the municipal authorities of the city of San Antonio, in the year 1856 or 1857, by ordnance
117 or resolution, assume and provide for the payment of the semi-annual interest upon the bonds, recognize their validity; and was not this done to enable the new administration of the railroad to negotiate the bonds in question? Did not thereafter an agent or officer of the company go to New York with said bonds, carrying with him the recognition of the same by the city authorities? Was not thereafter a portion of the road built and rolling-stock put upon it, and was not the portion so built used? Did not the company have locomotives, cars, depots, turn-tables, and other utensils pertaining to a railroad? And was not all this done after the year 1856, and after the action of the city authorities in this interrogatory mentioned?

9. Do you know the plaintiff in this case? Do you know anything of the negotiation of the bonds or coupons held by said plaintiff to him, the said plaintiff, and what consideration he paid for them? If so, state all you know, together with your means of information.

WAELDER & UPSON,
Att'ys for Pl'ff.

118 It is agreed that the answer to the foregoing interrogatories and cross-interrogatories may be taken before any officer of Bexar County authorized to take the depositions of witnesses under the laws of this State without the issuance of a commission, all objections to the admissibility of the depositions so taken being reserved.

It is also agreed that these depositions, when so taken, may be used in the case of J. C. Barnes vs. The City of San Antonio, pending in the same court, with the like reservation of objections to their admissibility.

DAVIS & MURPHY, AND
T. S. HARRISON, AND
E. S. HUSTON,
Att'ys for Defendant.
WAELDER & UPSON,
Att'ys for Pl'ff.

119 THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared Nath. Lewis, of said county, to me well known, who, being by me duly sworn "to true answers make to the interrogatories propounded to him" in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff and the City of San Antonio is defendant, responds as follows, to wit:

To inter. 1st. Thirty-six years.

To int. 2nd. I have been acquainted with the municipal government of San Antonio and also the general history of said railroad; not to my knowledge; don't know when it was commenced; don't know nary mile to my knowledge; I cannot say; can't say.

To int. 3rd. If twenty miles had been completed within three years from said date it would have been known generally; nothing was known of such a fact. I don't now recollect what acts the authorities of San Antonio took after said three years.

To int. 4th. No, not to my knowledge; it was—the year I do not now recollect, but think in 1850. My impression is fifty thousand dollars. Never, to my knowledge. Nineteen days' notice were given by an election notice through a newspaper called the Western Texan,
120 published by Lewis and Groesbeck (which said Lewis is myself), of December 12th, 1850, the said notice bearing date of De'b'r 9th, 1850, ordering an election to be held on De'b'r 31st, '50, for a mayor, aldermen, etc., and also to see if the city will vote to subscribe for the sum not exceeding fifty thousand dollars in the San Antonio and Mexican Gulf Railroad. Generally, I should think, as far as I know, the reason why the electors in general did not vote was that it was in the railroad charter that it took ⅔ of the whole electors to carry the question, and not ⅔ of what voted, and considered by not voting the vote would count against the proposition.

To int. 5th. I do not know.

To int. 6th. By general report.

To int. 7th. Never, to my knowledge.

To int. 8th. They were issued, as I understood; do not know; I have heard there was; don't know; I never considered them so; the reason was that I thought they were not issued according to law; I do not know; in my opinion, and of what I knew of them, they never were of any value.

To int'y 9th. Don't know.

To X-int. 1st. I never held any office under the city govern-
121 ment, but by the controverse by that days between those in favor against the railroad I derived my intelligence. I was the city printer at the time, and printed also for the railroad company; never further than stated; printing anything they brought to the office and paid for; never had a contract, except in the printing line. The city had subscribed, but no stock was issued, to my knowledge. I don't think that neither city nor county ever received stock. I do not now recollect, as the controversy had passed from before the people.

To X-int. 2nd. By general notoriety. I became acquainted by general talk. I know that action by the city was taken, but do not know or recollect how.

To X-int. 3rd. There are some records in the city books, but to my knowledge not correct in the votes, nor are they certified to by any one; I do not know of as many as thirty votes that I saw put in were

not for the railroad, when but three appear in the pretended record as opposed to said subscription for the road. I do not know whether stock for the city was rendered on the books of the company or not. I do not know that the mayor subscribed such stock, nor do I know the form, or could ever learn from any person whether such stock was issued, or any other stock to any other person. I was opposing to the city subscribing stock all the time. I was in favor of McDonald for mayor, at the
122 election held December 30th, 1850. I had in my printing office several hundred tickets struck off, with no railroad, neither for nor against it, on the ticket, and I am confident that I give out at least more than thirty tickets of the kind above spoken, not charged, for or against, which I saw the voters vote them; and by the writing or pretended record of what pretends to be the number of votes against the proposition, is but three. I do not know about subscription of stock after election. I don't know of any one being refused; I saw none refused; I think all voters who offered to vote were allowed to vote.

To X-int. 4th. I cannot say whether they were returned in writing. There is on page 119, in a book for the city minutes, the result of our election held on the 30th of December, 1850, held for the election of mayor & city officers and to vote on the railroad question, but not certified to by any one.

I did not. I do not undertake to give the number of votes at that time.

To X-int. 5th. I think it was generally known; I spoke about it all the time before election, to as many as I had time to talk to.

To X-int. 6th. I don't know; not in my opinion, at that time nor in this time. In my opinion at the time it was all wrong, as I never believed the vote was in favor of the railroad subscription.

123 To X-int. 7th. I was not in New York; don't know; don't know If made, I suppose to raise money; do not know. I don't think they had any value. I could not say. I do not know. Can't say; don't know—can't give names. I was in New York in 1858—a week. Can't say any more in answer to int. 7th.

To X-int. 8th. I don't believe there ever was any honesty in the concern. Don't know. As far as I know there were several presidents elected at different times, but I do not think the people ever believed there being a chance to get a railroad here through their act, or even they, the presidents, ever believed they would build the road. They might have done, for the object to collect a few dollars, but I don't think they had the power or right to raise said debt. It is my opinion it was done to raise a few dollars to allow some to go on a spree to New York. I do not now recollect; they were going to New York frequently whenever the' could raise the money to do. It was; but I do not know the time; I have heard it was; I have been told so. Never saw them. Don't know.

To X-int. 9th. I do not. I do not.

NAT. LEWIS.

THE STATE OF TEXAS,
County of Bexar:

124 I certify under my official seal and signature that the foregoing answers of the witness, Nath. Lewis, were taken, sworn to, and subscribed before me this fifth day of February, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub., Bexar Co.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county this day personally appeared Tho's J. Devine, of said county, to me well known, who, being by me duly sworn "to true answers make to the interrogatories propounded to him" in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff and the City of San Antonio is defendant, responds as follows, to wit:

Answer to interrogatory 1st. I have resided in San Antonio nearly twenty-nine years.

Interrogatory 2d answer. I have been acquainted with the municipal government of San Antonio since 1850, and I was quite familiar with the history of the San Antonio and Mexican Gulf Railroad Company, and with the management of the same. I do not believe a commencement was made within one year after the 1st of November, 1850. Captain Beck went out; had a few furrows run with a plow, and his negroes threw up a some earth. It was not a bona-fide commencement
125 of the road by the company. No portion of the road was completed within three years; and twenty miles were never completed by the company. I believe the company constructed about five miles of railroad from the town of La vaca, some time during the year 1857 or 1858, but am not positive as to date.

Interrogatory 3d answer. The failure to commence the work by the company within one year was known to all in San Antonio, who felt interest sufficient to enquire respecting this subject; and the failure to construct the twenty miles required by the charter was known to all intelligent persons in Bexar County, and could be readily known by any one, all persons elsewhere who might be sufficiently interested to make inquiry. "The Ledger Newspaper," published in San Antonio, gave notice (to the extent of its limited circulation) to the people, by publishing at different times all the facts, and a vast amount of falsehood on the subject.

Answer to interrogatory 4th. I have a distinct recollection of an election having been held for the purpose of ascertaining the sentiments of the citizens of San Antonio on the subject of the city subscribing fifty thousand ($50,000) to the capital stock of the San Antonio and Mexican Gulf Railroad Company, and giving city bonds to the company
126 for that amount, but cannot state whether or not the election was held for "that sole purpose." The vote was taken and was found to be decidely in favor of theubscription as above stated. I am not aware that the stock was ever issued to the city; it may have been, but I have not at present any recollection of it. The proper notice was, I believe, given, and the usual mode for giving information carried out, or followed. I have never heard of any person qualified to cast his vote having been refused that right at the election referred to in this answer.

Answer to interrogatory 5th. I do not recollect the number of votes cast at that election or the number of voters in the city at that time. The election was fairly held, and my recollection is that no murmers were heard, or allegations or charges of unfairness made at the time or after, not until quite recently, respecting any unfairness in the manner of voting, the mode of holding, or the returning the final result of that election.

Answer to interrogatory 6th. I refer to my preceding answers as an answer to this interrogatory.

Answer to interrogatory 7th. I have no recollection of any stock having been issued to the city of San Antonio. The books of the company will show that it was considered and treated as a stockholder and
127 through its mayor exercised all the rights like any other stockholder or director.

Answer to interrogatory 8th. The bonds to the extent or amount of fifty thousand ($50,000) dollars with interest, c'upons attached, were issued and delivered by the mayor of the city, Cha's F. King, I believe in 1852. Ans attempt was made in the summer and fall of 1853, by the late Enoch Jones and myself, to sell or pledge ninety thousand ($90,000) dollars of the bonds of the city of San Antonio and county of Bexar, in the cities of New York and Boston. The facts were, in substance, as follows:

In April, 1853, after a full and general advertisement for a contract to construct the road from the town of Lavaca to San Antonio, the contract was awarded to Jones and myself, we being the only parties offering terms that were to any extent within the apparent ability of the company to comply with our contract to build and equip the road, erect station-houses be on the line, was for the sum of twenty-seven thousand ($27,000) dollars per mile. Our pay was to be made in bonds of the company bearing, I think, seven (7) per cent. interest.

We received under the contract the bonds of the county of Bexar and city of San Antonio amounting to ninety thousand ($90,000) dollars; the remaining ten thousand were pledged to Doctor Edwards and a
128 person by the name of Mullen. We entered into a contract for 90,000 cross-ties with a M'r Platt; furnished him with two steam-mills, cash and drafts, payable in thirty, sixty, and ninety days, and then went New York to negotiate or sell the city and county bonds and have struck off the three hundred and sixty thousand (360,000) dollars of the railroad company's bonds and signed by the president of the company, M'r Henry Sheldon, who was residing in that city.

After our arrival, and the engraving and execution of the bonds, we made several attempts to sell or hypothecate the bonds of the company, as also the bonds of the city and county of Bexar. Our efforts were unavailing. The resources of the company were considered of little value, and the sum per mile for constructing and equipping the road was considered by some too small to leave a margin for even moderate profits. I do not believe the company were worth anything. The city and county bonds could have been sold for twenty-five or thirty cents on the dollar. We were offered a trade for the city and county bonds by an old acquaintance of M'r Jones. The consideration was to have been carts, wheelbarrows, picks, spades, shovels, and slop-clothing, suitable for railroad laborers. M'r Jones was in favor of the trade, b'lieveing that this, in connection with resources of our own, would enable us to make
129 a commencement on the road and something favorable would in the mean time turn up.

I was not willing to incur any more responsibility or loss, as I felt reasonably certain that neither our efforts or those of any other persons in Bexar County could galvanize into vitality the railroad enterprise.

We then went to Boston. Remained there about twelve days, when I started for San Antonio, taking with me, with the consent of M'r Jones, the railroad company's and the city and county bonds as we received them, and upon my offer we were released from the obligations of our contract and turned over to the company all the bonds received with the c'upons attached.

We did not attempt to advertise or put any of the bonds on what is

called the stock marked. The reasons were a violent political contest had raged in Bexar County previous to the August election in 1853 between the advocates and supposed opponents of State aid to railroads. Those charged with being opposed to what was called "the loan bill" were all defeated. The defeated party, and some who supposed the contract would be a profitable one, became violent opposers of the contract and the railroad company, and were not very nice as regarded either the accuracy or decency of their language. Their organ, the San Antonio Ledger, was filled with editorials and communications—a mass
130 of truth and falsehood. This paper was sent to all in New York that it was supposed we would come into communication with, and the result was that although the bonds of the city, county, or company were worth but little as objects for investment, they grew in the opinion of all who read the paper referred to, or who heard of it, to possess even less value.

The city and county shortly after refused to collect the interest tax, and the bonds grew from bad to worse.

After my delivery of the bonds to the company, and our release from our contract, nothing was done in the way of effort until after the election of Major Clarke as president of the company; I think it was in 1855 or 1856 he set out, shortly after our trip, to New York; one or two miles from the city his trunk was taken from the boot of the stage, cut open, and plundered of its contents. The thieves did not take the city and county bonds that were in the trunk; when he obtained his trunk, the bonds were likewise recovered. These bonds were under the control or in the possession of the railroad company down to the year 1859, or perhaps later, and were of but little value in the opinion of those who knew anything respecting the surrounding circumstances.

Answer to interrogatory 9. I have answered this interrogatory in the preceding answer.

Answer to X interrogatory 1st. I held the office of city attorney
131 from 1845 to 1850. I was a director of the railroad company from its first organization down to the close of the year 1853. As nearly as I can recollect, I was one of the contractors with said company for the construction of the road from Lavaca to San Antonio; it was entered into in the spring of 1853 in San Antonio; we were to construct the road, the first section within the time required under the charter, and the remainder in accordance with the charter. The city of San Antonio was always considered a stockholder from the time of the execution of its bonds by Cha's F. King, the then mayor; its stock was by all considered paid up when its bonds were delivered to the company. It was represented in the board of directors; it was represented by its mayor as director. The city of San Antonio and the county of Bexar were the two largest stockholders, and could always control the directory by their votes for the election of directors. I have already stated in my answers to direct interrogatories that the road was not commenced or completed according to its charter, but I am satisfied these failures or omissions were cured by subsequent legislation.

Answer to cross-interrogatory 2nd. They were known, as stated in my answer to the 3d interrogatory, to any intelligent person in San Antonio who felt the slightest interest in the matter: Sam S. Smith,
132 John James, Antonio Morehead, Tho's Whitehead, Daniel Devine, L. York, F. Granado, J. T. Dashiel, John C. French, and to all the prominent citizens then living, such as W'm B. Jaques, Oscar B. Brackett, John Bowen, John M. Carolan, John D. McLeod, Byan Callaghan, S. A. Maverick, Joseph H. Beck, and the entire board of direct-

ers. I was a director and knew it as well as I know anything connected with the affairs of the company. I cannot now say who informed me of some of the facts, but it was the topic of some of the conversations of the board when it met. I cannot now say who informed the other persons named in this answer, and I can hardly suppose you are serious in requesting me to answer after the lapse of nineteen years "by whom and in what manner" the public were informed that the railroad company failed in 1851, '52, '53, or '54 to construct their road, which you know, and all intelligent men know, is not yet construed. I only know that the city collector, under instructions, failed and refused to collect the tax for the payment of the interest falling due on the city railroad bonds. I have neither the time or inclination to examine the city records.

Answer to X-interrogatory 3d. The notices were, I believe, printed; the returns and other proceedings connected with the election referred to were in writing. I suppose they were recorded, but cannot say. To the best of my recollection, the entry on the books of the com-
133 pany, with the amount of stock subscribed by other stockholders. The stock was subscribed by the city in the same manner as others. The fact that the city gave her formal bonds by her mayor; others simply subscribed by signing in blank-books an agreement to take so many shares of the capital stock of the company. The subscription on the part of the city was made after the vote by the people. I believe the election was fairly and honestly made, and know of none entitled to vote who were refused; if such had been the case, I believe I would have heard of it long before this.

Answer to X-interrogatory 4th. I do not know whether the votes were recorded or not; I did not see or count the returns. I refer to my answers to interrogatories-in-chief, numbered 3 & 4, as the answer to this interrogatory.

Answer to X-interrogatory 5th. I can only refer to former answers as my answer to this interrogatory.

Answer to 6 X-interrogatory. I believe the city subscription was fairly and honestly made, and the bonds fairly and honestly executed and delivered by C. F. King as mayor. He could have no interest, as the company had no funds to tempt him or bribe him if it were possible to do so, and the president and directors had no interests to advance beyond increasing the value of their property in common with all others,
by the construction of the railroad.

134 Answer to 7 X-interrogatory. I have not stated that any attempt was made to place these bonds on the market, if by this term I am to understand you to refer to offering them at the stock exchange in the usual manner. Enoch Jones and myself tried to dispose of them through the efforts of Henry Sheldon, of New York; we met several gentlemen there; I cannot now recollect their names. Sheldon and his son were present—it was in his office; and effort was made to induce Winslow, Lanier & Co. to take them; they would not touch them; this was in last August and September in 1853. The city of San Antonio had means to pay her liabilities, but the citizens were reluctent to pay their taxes; the newspaper was circulating falsehoods, and the investment to a New Yorker in San Antonio bonds was not a desirable or even a prudent investment in the slightest degree. The effort was made to at least twenty or more. We then went to Boston, called at the office of Pierce and Bacon; learned from them that Boston was not likely to invest; met at the "Revere House" two or three persons, but could not do anything. I have not been in New York since the fall 1853. I was there

twice in that year; the first visits was for six weeks, the second time I remained about ten days. I refer to my answer to direct interrogatories.

135 Answer to X-interrogatory 8th. I am postive that the bonds referred to "were regularly, fairly, and honestly issued and delivered to said company," in, I believe, the year 1852. I am not aware of these bonds ever being redilivered to the city. I believe they remained after their redelivery or surrender of them to the company in its possession or under its control. I cannot state with certainty the time of the election of the new president referred to. There was renewed hope that something might be done. I cannot state whether or not the city made provision for payment of interest *or not*. Major Clarke, the then president, made one or perhaps two trips to New York with these bonds. In, I think, 1858 Major Clark made arrangements with Reid and Tracy, of New York; it may have been in 1857. I cannot state positively as regards the day, month, week, or year.

Reid & Tracy furnished the iron for almost five miles of road running out from the town of Lavaca, taking a deed of trust on the road-bed and material for security, and requiring in addition collateral security in the notes of the citizens of San Antonio to the full extent of their debt. M'r S. A. Maverick gave his note for ten thousand ($10,000)

136 dollars. I gave my note for three thousand five hundred ($3,500) dollars; several others for various amounts. The road-bed was graded or thrown up on the prairie, cross-ties and rails laid down by the company under the management of Clark. Reid & Tracy's debt matured; there was no money to pay them; they advertised the road, and sold it out under the provisions of the deed of trust.

The road and what little rolling-stock belonged to the company were sold for less than the amount of indebtedness, and M'r Maverick, myself, and others were sued on our security notes. M'r Maverick, to make up the deficiency, paid as his pro rata two thousand ($2,000) dollars; I paid seven hundred ($700) dollars, and I presume others paid. The construction of this five miles with no grading worthy of notice. The company consumed the land granted by the State, and obtained what rolling-stock it had on the credit of M'r Maverick and others in addition to the iron obtained from Reid and Tracy.

The work was an abortion from first to last. I am not aware that one dollar was earned by the road. What amount of the bonds of the city or county was expended in this work I am unable to state. I cannot say as to turn-tables. The company had at Lavaca a frame building which

137 might be called a depot. I believe it had not more than one locomotive, purchased on credit from "The Union Car-Works Company," and never paid for. The suit against the securities of the company was dismissed, for a failure to prosecute, some three or four towns since. The work done by the company was subsequent to 1856.

Answer to X-interrogatory 9th. I do not know the plaintiff in this case. I know nothing about the negotiation of the bonds referred to in this interrogatory, and consequently know nothing about the consideration paid for them.

THO'S J. DEVINE.

THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature that the foregoing answers of the witness Tho's J. Devine, written down by him, were sworn to and subscribed before me this fifth day of February, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub., Bexar Co.

138 THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared Ja's R. Sweet, of said county, to me well known, who, being by me duly sworn to true answers make to the interrogatories propounded to him in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff and The City of San Antonio is defendant, responds as follows, to wit:

To inter. 1st. I have resided in San Antonio nearly twenty-three (23) years.

To int. 2nd. Have had some knowledge of the municipal affairs of said city, having been several times, since 1850, alderman and mayor. Have some partial knowledge of the history of the San Antonio and Mexican Gulf Railroad Company and the management of the same. A so-called commencement was, I think, made within one year of the 1st of November, 1850; exact I cannot state. Some brush was cut and labor done on the presumed line of the road by Capt. J. H. Beck, dec'd. I cannot state what was done within three years after the 1st day of November, 1850, nor that twenty miles were ever completed by said company; nor when and where. Nearly twenty years having passed, I cannot state positively as to dates.

Interrogatory 3. Answered in reply to inter'g'y No. 2.

139 To 3-inter. 4th. An election was held in said city for the sole purpose of ascertaining whether said city would subscribe for stock in said company in exchange for city bonds and coupons. Said p'oposition was voted upon; but I cannot state if it was at the time of a regular city election, nor the year, but the amount was fifty thousand dollars. I do not know whether stock was issued to the city of Antonio or not. The days' notice I do not remember. The means, by notice of election, were given, I think, in the city newspaper and by handbills posted in the city. I have no knowledge of any of the electors of said city having been refused the privilege of voting.

Inter. 5th. I neither know the number of votes cast at said election nor the number of voters or qualified electors in said city at that time.

Int. 6th. Answered in answer to interrogatory No. 5.

Int'y 7th. Answered in reply to interrogatory No. 4th.

Int'y 8th. Dates I cannot swear to, as regards the bonds and c'upons issued by the city of San Antonio, nor, of my own knowledge, their value in New York. Several parties in New York bought the bonds in trade for assorted merchandise; nor do I know whether they could or could not be placed on the stock or exchange market; nor can I state whether the previous acts or doings between the city of San Antonio and

140 said railroad company were well known in New York City to some persons. They were those who had business transactions with Western Texas. Never knew the value they sold for then or afterwards.

Int'y 9th. I know nothing of the date when these bonds were in the hands of said railroad company, when taken away, under what circumstances, or by whom.

X 1. I was at different times, from 1850 to 1862, one of the aldermen and twice mayor. My connexion with the San Antonio and Mexican Railroad was as a director, in its early organization. I never had any contract with or was an employee of said railroad co. The city of San Antonio was considered a stockholder of said co., and to the extent of its subscription of fifty thousand dollars. Its stock was paid for in bonds bearing interest, with interest coupons attached. The mayor

represented the stock owned by the city as a director, and the city of San Antonio and Bexar County, owning each fifty thousand, were, I think, the largest stockholders of the company. Of the extension of time by the legislature I know; but date and terms I cannot state. I cannot state to how many persons were informed of any action of the municipal authorities of San Antonio was known, except that the meeting of the mayor and alderman were public. Their acts were by reso-
141 lution or ordinance at such meetings, and duly recorded in the book kept for that purpose.

3. Returns, notices, alluded to in connection with that or any election, it was the custom to record in record-books of the city. I know nothing of the entry on the books of said railroad company of that or any other stock, except that the company kept a book for that purpose. I know of no electors of said city having been refused the right to vote. I was present part of the time of the election and saw nothing of the kind. I believe the election to have been fairly conducted.

4. The names and number of voters are usually in possession of the city, and numbers recorded in their books. I cannot state the number of voters at that time in the city of San Antonio, though residing here.

5. I do not know the particulars alluded to; all their proceedings are matters of record, and I believe the stock subscription to have been made fairly and honestly, and the bonds issued fairly and honestly, in payment of its subscription, by the city authorities. I know nothing of any attempt to place said bonds upon the market in New York. I considered the resources of the city, properly managed, ample to pay its liabilities. I cannot say that any of the transactions between the rail-
road company and the city of San Antonio were well known in New
142 York; to persons having business connections with Western Texas they were known. I could not state what was known, or to whom, or their number, but should not considered the business public of New York as knowing anything about the matter, with the exceptions before made.

8. I know nothing of the time said bonds were *were* still in the hands of the railroad company, but consider them fairly and honestly in their hands, and never knew of them being redelivered to the city. A new president was elected, I think, in 1856, and strong hopes of the early building of the road entertained by the people; the municipal authorities levied a railroad tax, but in what year I cannot state; but taxes were collected to a certain extent in 1858 & 1859. I know nothing of the negotiation of the president, his agent, or officers, of the bonds alluded to. The railroad tax was understood to have been levied to pay the interest of the bonds. A portion of the road was built from Lavaca to Victoria, and rolling-stock put thereon, and I believe it was subsequent to 1856.

9. I do not know the plaintiff in this case, or of the negotiation of the bonds or coupons held by him, nor the consideration he gave for them.

JA'S R. SWEET.

143 THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature that the foregoing answers of the witness Ja's R. Sweet, written down by him, were sworn to and subscribed before me this sixth day of February, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub., Bexar Co.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared John James, of said county, to me well known, who, being by me daly sworn to true answers make to the interrogatories propounded to him in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff and the City of San Antonio defendant, responds as follows *as follows*, to wit:

To interrog. 1st. Since February or March, 1838.

To int. 2nd. To some extent I knew the affairs of the city, and also with the S. A. & M. G. R. R., for 3 or 4 years after granting of the charter in 1850. Was a director of said R. R. co. up to a short time of the letting of the contract to Jones & Devine, say in April, 1853. I can say that one Capt. Beck, now deceased, was employed by the R. R. co. to plough some ground and level it, upon a spot upon which the
144 railroad would probably run, say 2 or 3 miles from town. This was the only commencement made that I know of. As far as I know none was completed. The S. A. & M. G. R. R. was sold by trustees in 1859, at which date twenty miles of the road were not completed.

To int. 3rd. The facts were notoriously and publicly know at the time; everybody knew them who chose to enquire or could read the papers. On November 26th, 1853, the city council repudiated certain bonds, which had been issued to the company, on the ground of illegality in their issue, which was also generally known in this community.

To int. 4th. An election was held on Dec'b'r 30th, 1850, for mayor, aldermen, & other officers, and also for the purpose of subscribing fifty thousand dollars railroad stock. I don't know that the stock was ever issued to the city. I don't know the length of time of notice, or the means; it was known well to myself and all others who took an interest therein. Persons were allowed to vote who could show that they paid their taxes; I think none others.

Int. 5th. Some 256 voters voted, but this number is a small proportion of the voters at that time; the exact number of voters at that time I cannot give.

145 To int. 6th. I only know to the extent I have stated previously.

To int. 7th. I don't know that they did.

To int. 8th. It is within my knowledge that certain bonds and coupons were issued by the county and city, or by one or the other, I think both, to the R. R. co. Efforts were made to dispose of them by parties acting for the R. R. Really, everybody considered them worth less at home. The reason why they could not be negotiated was, that myself and others advised our friends in New York that we held they were illegally issued; that the contract was unfairly made with regard to the interest of the stockholders; and that we believed the road would never be built by these contractors or their friends. It was understood here that individuals were given stock enough to qualify them to become directors, who would vote for the letting of this contract to Jones & Devine. The act and doings between the city of San Antonio and said R. R. co. were known to many New York merchants who sold goods to San Antonio merchants, of whom New York capitalists & R. R. men would enquire. Among business men these bonds were generally considered to be of little, if any, value.

146 To int. 9th. Several men, agents or contractors, handled them or controlled them at different times, up to the time that the R. R. was sold by trustees, as before stated.

To 1st X-i. I never was connected with the municipal government of the city of San Antonio. I was director on the R. R. up to a short time of the letting of the contract to Jones & Devine. Held no other position. My name was left out in the election for directors, because it was understood that I would not vote for the contract to Jones & Devine. Never had a contract with said company. I can say, in elections the mayor voted as director, representing the city, to the extent of 50,000.00. So far as I know, the stock was paid in bonds. The mayor, as aforesaid, for a time after the charter was granted and the contract let to Jones & Devine; since then, I don't know to what extent he took part in the affairs of the company. I think the larger part of the cash stock was taken by and represented by the mayor, acting for the city, and the chief justice acting for the county. At the time of its sale by trustees, in April, 1859, a few miles, I can't say how many, were in running order—from 5 to 7 miles. I don't recollect the period or time connected with the revival or extension of charter by the legislature.

147 To X-int. 2nd. The facts were known to the community generally; much interest was taken at the time by intelligent people, and nearly everybody was talking about it and the chances of its progress. Acts by the city authorities were taken by a resolution; their action was recorded upon their books.

To X-int. 3rd. An entry was kept of the proceedings of the election, as usual in such cases. I have a list of the stockholders, in which the city and the county are each put down with five hundred shares, at one hundred dollars each, said list being of those who subscribed otherwise than those who subscribed in land; as far as I know it was. It must have been made after the vote of the people. A man was not permitted to vote who had not paid certain taxes. I do not know who was refused to vote, as I seldom stayed about the polls when people were voting. I saw none refused, as far as my recollection now serves me. I do not know whether the election was fairly conducted or not; I don't know.

To 4th X-int. The city records show that certain numbers of votes were cast; do not recollect seeing the election returns or count' the votes. Can't answer the balance further than I have answered.

148 To 5 X-int. I know that less than two-thirds of the legal voters have voted. Know no more than that is was known here to myself and others that such an election would be held.

To X-int. 6th. I do not know that the stock or bonds was fairly issued. Think the stock was subscribed like other stock, by the mayor representing the city.

To X-int. 7th. I don't say that I know of my own knowledge that said bonds were put upon the N. York market, or that any attempt was made to do so. The city could have paid the bonds by the levying of a tax, provided that the tax would be legally enforced. The resources of the city were sufficient to pay the bonds and c'upons and other indebtedness. I can't give the names or numbers of persons to whom the facts in regard to said R. R. were known in N. York City at this time. I made it a point to speak to New York men who were here on business. I knew many New York merchants and their commercial agents at that time. I was in N. York City several times between 1850 and 1854, buying goods as a merchant of San Antonio; was probably known to many business men in New York; don't recollect the exact dates of my visits to New York City; do not recollect hearing of the bonds spoken

149 of in New York. I only spoke of these bonds to my acquaintances where I met them, and whom I thought might have any interest in them or were likely to become interested in them from the

fact that they were doing business with this country. Such of the citizens of New York who wished to obtain information of San Antonio and of business matters connected with this country, could by enquiry find men in New York who could inform them.

To X-int. 8th. I have answered as far as I know this first question. Don't know; don't know; don't recollect at what time a new presidency was elected. Myself and most other persons of my acquaintance did not believe that the R. R. could be built by that company; so thought most everybody else, as far as I know. Don't know that the city of San Antonio in 1856 or 1857 provided for the payment of the semi-annual interest. About that time the company made an effort to go ahead, and parties were making efforts to dispose of the bonds by sale or by hypothecating them, professing to do so for the benefit of the road. Major Clark went to New York, I think, for that business. Don't know to what extent the city authorities recognized the said bonds. About that time a few miles of that road was built, and some stock put
150 upon it, but was too short a distance to be of any use to the community. Don't know to what extent locomotives and other R. R. stock was put in use. Don't know the date of the time these things were placed there, but were there, to my knowledge, in 1859 in connexion with the R. R. Don't know of the action of the city authorities mentioned.

To X-int. 9th. Do not know plaintiff, nor of the bonds, or coupons, or amount by him paid therefor.

JOHN JAMES.

THE STATE OF TEXAS,
County of Bexar:

I certify under my official seal and signature that the foregoing answers of the witness, John James, were taken, sworn to, and subscribed before me this sixth day of February, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub., Bexar Co., Texas.

THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared Sam S. Smith, of said county, to me well known, who, being by me duly sworn "to true answers make to the interrogatories propounded to him," in a suit pending in the circuit court
151 of the United States for the western district of *of* Texas, wherein R. S. Gould is plaintiff and the City of San Antonio is defendant, responds as follows, to wit:

To int. 1st. Since 1843.

To int. 2nd. Yes. I don't know; do not know of my own knowledge what was done; don't know whether three miles were completed 3 years after 1850. I do not know from my own knowledge, but understood that the road was made up near to Victoria, but not within three years.

To int. 3d. The facts of the non-completion of this road were well known in this country as early as '52 & '53. These actions were publicly and generally known by the municipal authorities instructing the collector to discontinue the collection of the railroad tax, the people generally refusing to pay the tax, and most of the stockholders refusing to pay their installments to the subscription of said stock, and most the parties repudiating the donations of land made to said company, considering that the company have failed to comply with the conditions, said donations having been made in trust.

To int. 4th. No; but at the general election for city officers in last Monday, the 30th of December, 1850, the proposition was submitted to the voters whether the city should subscribe fifty thousand dollars
152 in bonds or not; such stock was not issued to said city; the election notice was published in the Western Texan, a newspaper printed in the city of San Antonio, under the proprietaryship of Lewis & Grosbeck, in the issue of said newspaper dated December 12th, 1850; the election was held at the time mentioned above, and at which election no one was allowed to vote unless he had paid his city taxes, the clause in the charter then in force being enforced at that election, and of course excluding a large number of voters who would have been entitled to vote under the election law of the State at general elections.

To int. 5th. Two hundred and sixty-seven votes were cast for the mayor's office at said election of De'b'r, 1850. Two hundred and fifty-three votes were cast in favor of said proposition and three against it. In August 5th, 1850, in general election for State officers 711 votes were cast in San Antonio, and in August the 4th, 1851, 789 were cast for governor in this city.

To int. 6th. I answered this interrogatory in above.

To int. 7th. No; they, the said railroad co., never issued any bonds or stock to said city to my knowledge.

To int. 8th. They were issued (the bonds with c'upons attached) by the city of San Antonio to the S. A. & M. G. R. R. in 1852. An
153 attempt was made to place said bonds in the market of New York and elsewhere, but said attempt proved to be a failure. One of the reasons was the repudiation of the bonds by the city council of said city of San Antonio, Nov'b'r 26th, 1853, as appears from their minutes entered of that date and well known in the community, and the city council further ordering their collector to call on the treasurer of the R. R. Co. and demand the interest to him illegally paid on the city bonds; the bonds were never of any value in this community; of their value elsewhere I do not know anything; the previous acts and doings between the city of San Antonio and said R. R. Co. relating to the issue of said bonds and c'upons were well known in Texas at that time, but how far they were known in N. York and elsewhere I do not know; there was but little confidence in them here, never having heard of any bought or sold here.

To int. 9th. I do not know how long the bonds or any portion remained in the hands of the R. R. Co., or when they were taken away and by whom.

To 1st X-int. I was an alderman for several years, also city secretary, and was elected and served as city treasurer for the whole of the
154 year 1852. I was a director of said company at one time; served but a short time. I had no contract with said company. The city of San Antonio was a stockholder of said company to the amount of its bonds, viz, 50,000.00; its stock was the bonds and c'upons which it had issued; the mayor cast the vote which the city was entitled to; under its stock it was; no, they did not; they were only entitled to 500 votes each in voting for the officers of directory. All I know as regards the extension of the charter is, that the company employed Capt. Beck to plow the ground, etc., commencing from the city towards the coast.

To 2 X-int. They were known generally to the people of this county. I was county clerk at the time, and my business brought me in contact with nearly all the people *to* the county. The action spoken of taken by the board of aldermen in my direct answer was by resolution, as I understood, and I presume entered upon their minutes.

To X-int. 3rd. They were known generally to the people of this county. I

was county clerk at the time, and my business brought me in contact with nearly all the people of the county. The action spoken of taken by the board of aldermen in my direct answer was by resolution, as I understood,
155 *and I presume entered upon their minutes.*

To X-int. 3d. They were recorded in the minutes of the city. I do not know. The bonds of the city were signed by the mayor, and countersigned by the secretary, under a resolution of the board of aldermen. I do not know when the subscription on the part of the city was made, but the bonds were issued in 1852. The presiding officers refused any person to vote under the city charter who had not paid his taxes. I was present at the election. I cannot state at this time the names of those who were not allowed to vote, but under the then existing charter nobody could vote unless he had paid his city tax, and this would exclude all non-property owners from presenting themselves to vote. I believe the election was fairly conducted, and the votes of all qualified to vote under the charter were received.

To X-int. 4. The election-returns were made in writing, and the result thereof entered in the minutes on the first day of January, 1851. I was present when the ballots were counted. I was county clerk at that time, and knew nearly all of the *of the* city at that time. I have answered this by giving the numbers of electors that voted in August, '50, and
156 August, '51, in the city limits for State officers.

To X-int. 5th. I have nothing further to state, exce't what I stated in my direct answers, as I was not absent from the county, and of course had no means of communication except with those I met in the county.

To X-int. 6th. The bonds of said city were fairly and honestly issued, I believe, in payment of its stock. I know it was so.

To X-int. 7th. All I know of the matters took place here, as I have stated in my direct answer, as I never was in New York. The railroad company sends agents North to negotiate the bonds at different times, and they were also delivered at one time to Judge Devine and Enoch Jones, as contractors, who took them North, and having failed to negotiate them took them back here to the company. No attempt was ever made by a city officer, to my knowledge. The means and resources of the city were ample to pay the principal and interest of the bonds and all its liabilities, by means of taxation. Know nothing about matters in New York City relative to their knowledge of the affairs of the S. A. & M. G. R. R. with the city of San Antonio.

To X-int. 8th. I have stated all I know relative to the matter in my direct answer. I know that Major W. J. Clarke was elected president of the company, and that he went North and made strenuous
157 efforts to revive the company, and some of the people had hopes that he would succeed, but it proved a failure. I know nothing about the municipal authorities of the city in the years 1856 & '57, either by ordinance or resolution, recognizing the validity of the bonds. I was an alderman during the year 1856, and have no knowledge of it. I have understood a portion of the road was built on the lower end, but I never saw it.

To X-int. 9th. I do not know the plaintiff, to my knowledge, and know nothing of the negotiation of the bonds or c'upons held by said pl'tf to him, the said pl'tf, nor what he paid for it.

SAM. S. SMITH.

THE STATE OF TEXAS,
County of Bexar:

I certify, under my official seal and signature, that the foregoing answers of the witness Sam. S. Smith were taken, sworn to, and subscribed before me this sixth day of February, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub., Bexar Co.

158 3d. Defendant read agreed copy marked "C," of proceedings of corporation of city of San Antonio, filed in said case, No. 1172, on February 3d, 1875, but used by consent as true copy for this case, as follows:

At a special meeting of the city council Nov. 26th, 1853, M'r Callaghan arose and stated the object of the meeting. That the city bonds issued to the S. A. and Mex. G. R. R. Company were illegal, inasmuch as the vote given on the measure was not in compliance with the 12th section of said charter; when M'r Sweet offered the following preamble and resolutions, which was unanimously adopted:

Be it resolved, That whereas by an act of incorporation by the legislature of the State of Texas, to the San Antonio and Mexican Gulf Railroad Company, approved 5th September, 1850, it is declared as follows:

SEC. 12TH. That the mayor and aldermen of the city of San Antonio be, and they are hereby, authorized to subscribe to the capital stock of said company for said city, to an amount not to exceed fifty thousand dollars, as also such incorporated towns through which said railway may pass, inclusive of the town, if any, that may be its terminus on the Gulf; and to issue bonds bearing interest, or otherwise to pledge the faith
159 of said city or towns to pay for the same; the chief justice and county commissioners of the several counties through which the railway may pass, shall be, and they are hereby, authorized to subscribe to the capital stock of said company for their respective counties, to an amount not to exceed fifty thousand dollars, and to issue bonds bearing interest, or otherwise to pledge the faith of their respective counties to pay the same; provided, that the chief justice and county commissioners of said counties shall not make such subscription unless two-thirds of the qualified electors of said county or counties at an election to be held for that purpose, shall vote in favor of such subscription being made; and the chief justice of any such counties may order such election to be held, and shall give notice of the time and object of such election, by causing notice thereof to be posted up in each precinct of the county, at least thirty days before the holding of such election; said election to be conducted in the manner regulating county elections, so far as the same may be applicable; provided, also, that the said mayor and aldermen of the city of San Antonio and the towns upon the line, and at the terminus of said railway on the Gulf, shall not make such subscriptions unless two-thirds of the electors of said city or towns, qualified
160 to vote for town or city officers, at an election to be held for that purpose, shall vote in favor of such subscription being made; and the mayor of said city or towns may order such an election to be held, and shall give notice by publication in the newspaper published in the city or town, or by notice posted up in the precincts of said city or town for at least twenty days previous to such elections being held; and said elections shall be conducted in the same manner regulating the respective city or town elections, so far as the same may be appli-

cable: Provided, further, that where any such subscriptions shall be made and bonds thereof be issued by the mayor and aldermen of said towns or city, or by the chief justice and county commissioners of any of said counties; it shall be their duty, respectively, to provide for the punctual payment of the interest that may from time to time become due upon the same, and for the payment of the principal thereof by levying and collecting a tax on the real and personal property in the city, town, or county for which such subscription shall be made and bonds issued, which tax shall not be less than ten cents, nor more than fifteen cents on each and every one hundred dollars taxable property in said
161 city, town, or county, and shall be assessed and collected, and paid into the treasury of said city, town, or county by which it is levied, in the same manner the city or county tax in said city, towns, or counties is assessed and collected, which tax shall be continued from year to year until the whole amount of the principal and interest due on said bonds shall have been fully paid and discharged, and when collected after deducting therefrom the expenses of assessing and collecting, shall first be applied to the payment of the interest due on such bonds, and the remainder shall be applied to the payment of the principal of such bonds.

And that whereas an election was ordered to be held on the last Monday in December, 1850, and at such election but 256 votes having been polled, which not being the requisite majority required by the act of incorporation and resolution of the board; therefore, be it resolved, That we hereby declare said bonds for $50,000, issued by the said city of San Antonio, null, void, and of no effect; and, furthermore, to order day an election to decide upon subscribing to said road.

M'r Callaghan offered the following resolution, which was adopted:

Resolved, That whereas the bonds issued to the San Antonio
162 and Mexican Gulf Railroad Company by the city of San Antonio having been declared illegal, be it therefore further resolved, that the city collector be hereby instructed to call upon the treasurer of said company and demand from him the interest illegally paid thereon.

Approved.

Attest:

MARTING H. CAMPBELL, *City Sec.*

Attest:

EUGENIE NAVARRO, *C. C.*

SAN ANTONIO, *Feb. 2d*, 1872.

Suit pending in the circuit court of the United States for the western district of Texas.

R. S. GOULD
vs.
CITY OF SAN ANTONIO.

It is hereby agreed that the foregoing two leaves contain true copies from the records of the city of San Antonio, and that the ordinances and resolutions therein contained, or any of them, may be used in evidence on the trial of the above-entitled cause, the same as, and in place of, the original records.

It is further agreed that the said copies may in like manner be used as evidence in the case of J. C. Barnes vs. The City of San Antonio,

which case is also pending in the same court. Notice to produce the original records is waived in both cases.

DAVIS & MURPHY,
T. S. HARRISON, AND
E. G. HUSTON,
Att'ys for Defendant.
WAELDER & UPSON,
Att'ys for Pl'ff.

163 Defendant here rested case.

1. Plaintiff then read deposition of James R. Sweet, in answer to interrogatories, which deposition was filed in said case, No. 1172, but are used as if taken in this case by agreement, as follows:

164 THE STATE OF TEXAS,
County of Bexar:

Before me, Julius Hoyer, a notary public in and for said county, this day personally appeared Ja's R. Sweet, of said county, to me well known, who being by me duly sworn to true answers make to the interrogatories propounded to him, in a suit pending in the circuit court of the United States for the western district of Texas, wherein R. S. Gould is plaintiff, and the City of San Antonio is defendant, responds as follows, to wit:

To inter. 1st. I have resided in San Antonio nearly twenty-three (23) years.

To inter. 2nd. Have had some knowledge of the municipal affairs of said city, having been several times since 1850 alderman and mayor; have some partial knowledge of the history of the San Antonio and Mexican Gulf Rail Company and the management of the same. A so-called commencement was, I think, made within one year of the 1st of November, 1850; exact I cannot state. Some brush was cut and labor done on the present line of the road by Capt. J. H. Beck, dec'd. I cannot state what was done within three years after the first day of November, 1850, nor that twenty miles were even completed by said company, nor when and where, nearly twenty years having passed. I cannot state positively as to dates.

165 Interrogatory 3. Answered in reply to inter'og. No. 2.

To inter. 4th. An election was held in said city for the sole purpose of ascertaining whether said city would subscribe for stock in said company in exchange for city bonds and coupons. Said proposition was voted upon, but I cannot state if it was at the time of a regular city election, nor the year, but the amount was fifty thousand dollars. I do not know whether stock was issued to the city of San Antonio or not. The days' notice I do not remember. The means by notice of election were given, I think, in the city newspaper and by handbills posted in the city. I have no knowledge of any of the electors of said city having been refused the privilege of voting.

Int'y 5th. I neither know the number of votes cast at said election, nor the number of voters or qualified electors in said city at that time.

Int'y 6th. Answered in answer to interrogatory No. 5.

Int'y 7th. Answered in reply to interrogatory No. 4.

Int'y 8th. Dates I cannot swear to as regards the bonds and coupons issued by the city of San Antonio, nor of my own knowledge their value in New York. Several parties in New York bought the bonds in trade for assorted merchandize. Nor do I know whether they could or could not be placed on the stock of exchange market. Nor can I state

166 whether the previous acts or doings between the city of San Antonio and said railroad company were well known in New York City; to some persons they were, those who had business transactions with Western Texas. Never knew the value they sold for then or afterwards.

Int'y 9th. I know nothing of the date when those bonds were in the hands of said railroad company, when taken away, under what circumstances, or by whom. I was at different times from 1850 to 1862 one of the aldermen and twice mayor. My connection with the San Antonio and Mexican Gulf Railroad was as a director, in its early organization. I never had any contract with or was an employee of said railroad co. The city of San Antonio was considered a stockholder of said co., and to the extent of its subscription of fifty thousand dollars. Its stock was paid for in bonds bearing interest, with interest coupons attached. The mayor represented the stock owned by the city as a director; and the city of San Antonio and Bexar County owning each fifty thousand were, I think, the largest stockholders of the company. Of the extension of time by the legislature I know, but date and terms I cannot state. I cannot state to how many persons were informed of any action of the municipal authorities of San Antonio was known, ex-

167 cept that the meeting' of the mayor and aldermen were public. Their acts were by resolution or ordinance at such meetings, and duly recorded in the book kept for that purpose.

3. Returns, notices, alluded to in connexion with that or any election, it was the custom to record in record books of the city. I know nothing of the entry on the books of said railroad company of that or any other stock, except that the company kept a book for that purpose. I know of no electors of said city having been refused the right to vote. I was present part of the time and saw nothing of the kind. I believe the election to have been fairly conducted.

4. The names and number of voters are usually in possession of the city, and numbers recorded in their books. I cannot state the number of voters at that time in the city of San Antonio, though residing here.

5. I do not know the particulars alluded to. All the proceeding' are matters of record, and I believe the stock subscription to have been made fairly and honestly, and the bonds issued fairly and honestly in payment of its subscription by the city authorities. I know nothing of any attempt to place said bonds upon the market in New York. I considered the resources of the city, properly managed, ample to pay its liabilities. I cannot say that any of the transactions between the

168 railroad company and city of San Antonio were well known in New York. To persons having business connections with Western Texas they were well known. I could not state what was known or to whom, nor their number, but should not consider the business public of New York as knowing anything about the matter, with the exceptions before made.

8. I know nothing of the time said bonds were still in the hands of the railroad company, but consider them fairly and honestly in their hands, and never knew of their being redelivered to the city. A new president was elected, I think, in 1856, and strong hopes of the early building of the road entertained by the people; the municipal authorities levied a railroad tax, but in what year I cannot state; but taxes were collected to a certain extent in 1858 & 1859. I know nothing of the negotiation of the president, his agent or officers, of the bonds alluded to. The railroad tax was understood to have been levied to pay the interest of the bonds; a portion of the road was built from Lavaca to

Victoria, and rolling stock put thereon, and I believe it was subsequent to 1856.

9. I do not know the plaintiff in this case or of the negotiation of the bonds or coupons held by him, nor the consideration he gave for them.

JA'S R. SWEET.

169 THE STATE OF TEXAS,
County of Bexar:

I certify, under my official seal and signature, that the foregoing answers of the witness, Ja's R. Sweet, written down by him, were sworn to and subscribed before me this sixth day of February, A. D. 1872.

[L. S.] JULIUS HOYER,
Not. Pub., Bexar Co.

2d. Plaintiff then offered by way of rebutting testimony the following special acts of the legislature of Texas, viz: Act of 14th Febru'y, 1852; that of Febru'y 13th, 1854; that of Febru'y 20th, 1856; that of Nov'r 14th, 1857; the act to revive and continue up to the month of Janu'y, 1862, and the act of Febru'y 1st, 1861; to all of which defendant excepted, (see bill of exceptions of city of San Antonio, No. 2), but defendant's exceptions were overruled and acts admitted as follows:

170 An act supplemental to an act to incorporate the San Antonio Railway Company, approved September 5th, 1850.

SECTION 1st. Be it enacted by the legislature of the State of Texas, That there shall be granted to the San Antonio and Mexican Gulf Railway Company eight sections of land of six hundred and forty acres each, for every mile of railway actually completed by them and ready for use; and upon the application of the president of the company, or any duly authorized agent therefor, stating that any section of five miles or more of said railway has been completed and is ready for use, it shall be the duty of the comptroller of public accounts to require the State engineer, or a commissioner to be appointed by the governor, to examine said railway, and upon his certificate that said section of said railway has been completed in a good and substantial manner, and is ready for use, the comptroller shall give information of that fact to the commissioner of the general land office, whose duty it shall be to issue to said company land-certificates to the amount of eight sections of land of six hundred and forty acres each, for each and every
171 mile of railway thus completed and ready for use. Such certificates shall be for six hundred and forty acres each, and shall be located upon any unappropriated public domain of the State of Texas, with' twelve months from the issuing thereof, which date shall appear upon the face of each certificate, and upon the return of the field-notes of any survey made by virtue of any certificate thus issued, it shall be the duty of the commissioner of the general land office to issue patents to said company in their corporate name; one-fourth of which said land thus patented shall be alienated by the company in six years, one-fourth in eight years, one-fourth in ten years, and one-fourth in twelve years, so that the whole of the lands thus granted shall pass from the hands of the company within twelve years from the date of the patents thus issued.

SEC. 2. This company is hereby required, at all reasonable times and for a reasonable compensation, to draw over their road the passengers, merchandise, and cars of any other railroad corporation which has been

or may hereafter be authorized by the legislature to enter with their railroad and connect with the railroad of this company; and if the respective companies shall be unable to agree upon the compensation aforesaid, it shall be the duty of the president of each company
172 to select each one man as a commissioner, and the tow commissioners so selected shall choose a third in case of disagreement, neither of whom shall be a stockholder in either road or interested therein, and they shall fix the rates, which shall not be changed for one year from the time of going into effect. The said commissioner shall also fix the stated periods at which said cars are to be drawn as aforesaid, having reference to the convenience and interests of said corporations and the public who will be accommodated thereby. The right or power is specially conferred on this said company to connect and contract with any railroad company chartered by this State for the performance of like transport, and in case of disagreement between said companies the same shall be referred and settled as aforesaid, and be binding for one year as aforesaid.

SEC. 3. Said company shall be required to have a good and sufficient brake upon the hindermost car in all trains transporting passengers or merchandise, and also permanently stationed there a trusty and skilfull brakeman, under a penalty of not exceeding the sum of one hundred dollars for each offence, to be recovered in any court of competent
173 jurisdiction, for the benefit of the State; and said company shall cause to be placed on each locomotive-engine passing over their road a bell of the weight of at least thirty-five pounds or a steam-whistle, and the said bell shall be rung or the whistle blown at the distance of at least eighty rods from the place of crossing any highway or turnpike, and keep ringing or blowing until the engine has passed or stop'ed. Said company shall be required to construct their railroad with T or U iron rails: Provided, that no land shall be donated unless the company shall actually commence their road within two years, and actually complete and finish at least ten miles within three years, and that this act shall take effect from its passage.

Approved Feb'y 14th, 1852.

An act supplemental to an act supplemental to an act to incorporate the San Antonio Railway Company, approved September fifth, eighteen hundred and fifty.

SECTION 1st. Be it enacted by the legislature of the State of Texas, That the San Antonio and Mexican Gulf Railroad Company shall be, and are hereby, invested with the power of continuing their road
174 from the city of San Antonio, on the nearest practicable route, to intersect with the Mississippi and Pacific Railroad west of the Red Fork of the Colorado River, under the same restrictions and conditions as are imposed by the original charter to which the above-recited act is a supplement: Provided said company shall abandon all right of branching, as provided for in original charter.

SEC. 2. That in all cases where the San Antonio and Mexican Gulf Railroad shall pass through any public lands, all such lands, to the depth of three miles from the extension-line of the track on each side thereof, shall be reserved by the State from and after the time such track shall be fixed or designated by actual survey, and the said lands, as the road is constructed, shall be delivered into sections fronting one mile each, the road plainly marked, and these reserved lands the company shall have the right, by virtue of certificates issued in accordance with the provisions of the above-recited supplemental act, or of any

other act of the legislature of this State, to cause to be located, surveyed, and patented for their use each alternate section, such section in each instance embracing a tract of land fronting one mile, pursu-
175 ing an equal width to the depth of three miles, and the remaining sections shall continue the property of the State until disposed of by the legislature.

SEC. 3. That the route of said road and point of connection with the Mississippi and Pacific Railroad shall be determined by actual survey, and a map of said road exhibiting its location shall be filed with the secretary of the State within twelve months after the survey and location of the route of the Mississippi and Pacific Railroad through Texas, or in default thereof all the rights and privileges granted by this supplemental act shall cease and no longer exist.

SEC. 4. That in case the San Antonio and Mexican Gulf Railroad Company shall accept the benefits of this act they shall no longer have the privilege of branching said road, and if forty miles of said San Antonio and Mexican Gulf Railroad be not completed and equip'ed within two years from the passage of this act their said charter shall become null and void, and said company shall forfeit all their rights and privileges.

SEC. 5. That the franchise of said San Antonio and Mexican Gulf Railroad Company, in case they accept the benefits of the
176 provisions of this supplemental act, shall cease and determine at the end of ninety-nine years; and said company shall not be allowed to receive any lands by virtue of the provisions of the above recited supplemental act or of this act after ten years from and after the passage of this act.

SEC. 6. That this act take effect and be in force from and after its passage.

Approved Feb'y 13th, 1854.

An act supplemental to an act to incorporate the San Antonio and Mexican Gulf Railroad, approved September 3rd, eighteen hundred and fifty, and the supplements thereto.

SECTION 1. Be it enacted by the legislature of the State of Texas, that the time for the completion of the first section of twenty-five miles of the San Antonio and Mexican Gulf Railroad be, and the same is hereby, extended till (until) the first day of July, eighteen hundred and fifty-seven; provided said company shall thereafter be compelled to construct at leas' twenty-five miles each and every year until the entire road is completed, under the penalty of forfeiture declared in the original and supplement charter of said company.

177 SEC. 2. That hereafter it shall not be lawful for the county court of Bexar County proper to levy and collect any tax on real estate without the limits of Bexar County to pay the interest on any railroad bonds heretofore issued by said county, any law to the contrary notwithstanding.

SEC. 3. That hereafter the directors of said company shall never exceed thirteen nor less than seven; and that this act take effect from and after its passage.

Approved 20th February, 1856.

An act to revive and continue in force, and supplemental to and amendatory of, an act to incorporate the San Antonio and Mexican Gulf

Railroad Company, approved September 5th, 1850, and the several supplemental and amendatory acts concerning said railroad.

SECTION 1. Be it enacted by the legislature of the State of Texas, that an act entitled an act to incorporate the San Antonio and Mexican Gulf Railroad Company, approved September 5th, 1850, and the several supplementary and amendatory acts concerning said railroad be, and the same are hereby, revived and continued in force in ac-
178 cordance with the provisions of said original act, and amendatory thereto, and on the terms and conditions hereinafter mentioned: Provided, That this act of revival shall not be so construed as to render liable any person or persons for the payment of any unpaid balance of the capital stock of said company who would not have been so liable without the passage of this act.

SEC. 2. That the eighteenth section of an act entitled an act to incorporate the San Antonio and Mexican Gulf Railroad Company, approved September 5th, 1850, be so amended that the same shall hereafter read as follows, to wit: That at least twenty-five miles of said railroad shall be completed in running order by the 1st day of January, 1860, otherwise this charter shall be null and void.

SEC. 3. That the proviso to the third section of an act entitled "An act supplementary to an act to incorporate the San Antonio Railway Company, approved September 5th, 1850," approved February 14th, 1852, be so amended so that the same shall hereafter read as follows, to wit:
That no land shall be donated in accordance with the provisions
179 of this act unless five miles of said road shall be completed on or before the last day of January, 1858.

SEC. 4. That the fourth section of an act entitled "An act supplementary to an act to incorporate the San Antonio Railway Company, approved September 5th, 1850," approved February 13th, 1854, be so amended that the same shall hereafter read as follows, to wit: That, in case the San Antonio and Mexican Gulf Railroad Company shall accept the benefits of this act, they shall no longer have the privilege of branching said road; and if twenty-five miles of said road be not completed and equip'ed on or before the first day of January, 1860, then said charter shall become null and void, and said company shall forfeit all their rights and privileges.

SEC. 5. That the first section of the act entitled "An act supplemental to an act to incorporate the San Antonio and Mexican Gulf Railroad," approved September 5th, 1850, and the supplements thereto, approved February 20th, 1856, be, and the same are hereby, repealed.

SEC. 6. That if said San Antonio and Mexican Gulf Railroad Company shall complete twenty-five miles the 1st day of January, 1860, they
shall be entitled to receive therefor sixteen sections of land per
180 mile, under the provisions of an act entitled "An act to encourage the construction of railroads in Texas by donations of land," approved January 30th, 1854, and upon the completion of twenty-five miles of said road within each year after the first day of January, 1860, the said company shall be entitled to receive sixteen sections of land per mile therefor under the provisions of said act, until the same be repealed or expire by limitation.

SEC. 7. That said company shall be entitled to all the benefits of an act entitled "An act to provide for the investment of the special school fund in the bonds of railroad companies incorporated by the State," approved August 13th, 1856, provided said railroad company in all things shall comply with the terms and conditions of said law, as it now exists,

or as it may hereafter be amended by the legislature of the State of Texas.

SEC. 8. That the town of Lavaca or Matagorda Bay, be, and the same is hereby, declared the eastern terminus of said San Antonio and Mexican Gulf Railroad.

SEC. 9. That the capital stock of said company, for the present,
181 shall not exceed one million dollars, which may be increased, from time to time, by consent of two-thirds of the stockholders, in amount so as not to exceed two million five hundred thousand dollars.

SEC. 10. That this act take effect and be in force from and after its passage.

Approved November 14, 1857.

An act supplmental to an act and amendatory of an act entitled "An act to incorporate the San Antonio and Mexican Gulf Railroad Company," and supplemental to and amendatory of the several acts supplemental to and amendatory of the above recited act.

SECTION 1. Be it enacted by the legislature of the State of Texas, that the time for the completion of the second section of twenty-five miles of the San Antonio and Mexican Gulf Railroad Company be, and the same is hereby, extended to the first day of January, 1863, anything in the original act of incorporation or in the several acts supplemental to and amendatory thereof to the contrary notwithstanding: Provided, That the past failure of said company to have completed any section or any given extent of road within the timess prescribed in
182 said original act of incorporation, or in any of the several acts supplemental to and amendatory thereof, shall not be so construed as to deprive said company of any of the benefits arrising under said original act of incorporation, and the several acts supplemental to and amendatory thereof, or arising under any general or special law of the State, in the same manner as if said company had made no such failure.

SEC. 2. That this act take effect and be in force from and after its passage.

Approved February 1st, 1861.

The case was then closed.

We agree that the above and foregoing pages contain a true and correct statement of evidence that was offered and admitted by the court on the trial of the above-entitled cause at the January term of 1875, the circuit court of the U. S. for the west. dist. of Texas.

GEO. W. PASCHAL &
GEO. W. PASCHAL, JU'R,
For Pl'ff.

DAVIS & BRITTON,
For Defendant.

W. B. WOODS,
Judge.

183 Petition for writ of error. (Endorsed, to wit: City of San Antonio vs. Thomas J. Mehaffey. Petition for writ of error. Allowed. T. H. Duval, U. S. judge. Filed May 1, 1875. M. Hopkins, clerk.) Which is in words as follows:

Petition for writ of error.

In the U. S. circuit court for the western district of Texas.

THE CITY OF SAN ANTONIO, PLAINTIFF IN ERROR,
vs.
THO'S J. MEHAFFEY, DEFENDANT IN ERROR. } 1139.

To Matthew Hopkins, esqr., clerk of the circuit court of the U. S. for the western district of Texas:

This petition of the corporation of the city of San Antonio, a corporation within the county of Bexar, and within the said district, respectfully represents that petitioner was defendant in a certain suit at law in the circuit court for said district, lately pending in said court, and numbered 1139 on the docket of same, wherein Tho's J. Mehaffey was
184 plaintiff; that at a term of said court, begun and holden at Austin, Texas, on the 1st Monday in January, A. D. 1875, the said suit was tried, and during said term, to wit, on the 8th day of Feb'y, A. D. 1875, a judgment was rendered by said court in said suit, wherein was adjudged to said Tho's J. Mehaffey, as such plaintiff, and against your petitioner, the sum of money claimed by said Mehaffey in his pleadings, to wit, the sum of $5,125.40, and also all costs about said suit expended, but the amount of said costs is unknown to petitioner.

Your petitioner further represents that she is aggrieved by the action, orders, finding, and judgment of said court in said suit, and that she is informed, and believes, that said action, orders, finding, and judgment are in many respects erroneous, and have operated to deprive your petitioner of her just and legal rights.

Wherefore your petitioner prays that a writ of error issue to remove said suit and all proceedings therein to the Supreme Court of the United States, for the purpose of correcting the many errors committed in said suit, to the great grievance of petitioner, and to this end that citation and copy of this petition in proper form issue to the
185 marshal of the United States for the said western district of Texas, for service on said Mehaffey.

And petitioner further prays that, after due proceedings had before the Supreme Court of the United States, the said judgment may, in all respects, be reversed, and petitioner reinstated in her just and legal rights.

Petitioner also prays for all general relief to which, in law and justice, she may be entitled.

DAVIS & BRITTON,
For Plaintiff in Error.

Bond in writ of error. (Endorsed, to wit: City of San Antonio vs. Thomas J. Mehaffey. Bond in writ of error. Bond approved. T. H. Duval, U. S. judge. Filed May 1, 1875. M. Hopkins, cl'k.) Which is in words as follows:

In the Supreme Court of the U. S., in error to the circuit court western dist. of Texas.

THE CITY OF SAN ANTONIO
vs.
THOMAS J. MEHAFFEY. } No. 1139.

186 Know all men by these presents, that we, the city of San Antonio, Texas, as principal, and J. H. Kampmann and Edward Ber-

den, as sureties, are held and firmly bound unto the above Thomas J. Mehaffey in the sum of five hundred dollars ($500), to be paid to the said Thomas J. Mehaffey, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and one and each of our heirs, executors, and administrators, firmly by these presents. Witness our hands and seals (using scrawls for seals) this ninth day of April, A. D. eighteen hundred and seventy-five.

The condition of the above bond is such, that whereas the above city of San Antonio hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the suit of Thomas J. Mehaffey vs. The City of San Antonio, No. 1139 on the law docket of the circuit court of the U. S. for the western district of Texas (being the 5th circuit):

Now, therefore, if the above-named city of San Antonio shall prosecute her said writ of error to effect and answer all costs if she shall fail to make good her plea, then this obligation to be void; otherwise to be and remain in full force and virtue.

J. H. BRENCH, [SEAL.]
Mayor City of San Antonio.
J. H. KAMPMANN. [SEAL.]
E'D BRADEN. [SEAL.]

187 THE STATE OF TEXAS,
County of Bexar:

Before me, H. Mac Cormack, U. S. commissioner, western district of Texas, personally appeared Ja's H. French, mayor city of San Antonio, J. H. Kampmann, and Edward Braden, all to me well known, who to me acknowledged that they and each of them signed, executed, and delivered the foregoing instrument of writing for the uses, purposes, and consideration therein set forth.

To certify which I hereunto set my hand and affix the impress of my official seal, at office in San Antonio, Texas, this 9th day of April, A. D. 1875.

[SEAL.]

H. MAC CORMACK,
U. S. Com'r, W. Dist. of Texas.

THE STATE OF TEXAS,
County of Bexar:

I, H. Mac Cormack, U. S. commissioner, western district of Texas, do hereby certify that I am personally acquainted with J. H. Kampmann and Edward Braden, whose genuine signatures appear at the foot of the foregoing bond as sureties thereto; that they are respectable and wealthy citizens of said county and State, and that they are solvent and good sureties.

188 In testimony whereof I hereto set my hand and the impress of my official seal, at office in San Antonio, this 9th day of April, A. D. 1875.

[SEAL.]

H. MAC CORMACK,
U. S. Commissioner, W. D. of Texas.

Writ of error. (Endorsed, to wit: In Supreme Court of the United States. City of San Antonio, pl'ff in error, vs. Thomas J. Mehaffay, def't in error. Writ of error. To Supreme Court of the United States. Issued 19th day of August, A. D. 1875. M. Hopkins, cl'k circuit court U. States at Austin.) Which is in words as follows:

UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable judges of the circuit court of the United States, 5th circuit, in and for the western district of Texas, holding sessions at Austin, in said district, greeting:

Because in the record and proceedings, as also in the rendition
189 of the judgment of a plea which is in said circuit court before you, between Thomas J. Mehaffay, who is plaintiff, and The City of San Antonio, who are defendants, No. 1139 on the docket of said circuit court of the United States, sitting at Austin, in said district, a manifest error hath happened, to the great damage of the said City of San Antonio, who is plaintiff in error herein, as by their complaint appears;

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the U. States, 19th day of August, in the year of our Lord one thousand eight hundred and seventy-five, and seal of our said circuit court, at Austin, in the one hundredth year of the Independence of the United States.

M. HOPKINS,
Clerk of the Circuit Court of the United States,
West. Dist. of Texas, at Austin.

Allowed by—

T. H. DUVAL,
U. S. Judge.

190 Citation in error. (Endorsed, to wit: In Supreme Court of the United States. City of San Antonio, pl'ff in error, vs. Thomas J. Mehaffey, def't in error. Citation in error. Issued 19 day of August, A. D. 1875. M. Hopkins, cl'k. Serve Geo. W. Paschal, j'r, with this copy.) Which is in words as follows:

UNITED STATES OF AMERICA:

To Thomas J. Mehaffey, or his att'ys of record, Geo. W. Paschal, sen'r, Geo. W. Paschal, jun'r, esqr., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Texas, 5th circuit, sitting at Austin, wherein the City of San Antonio is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

191 Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 19th day of August, in the year of our Lord one thousand eight hundred and seventy-five.

T. H. DUVAL,
U. S. Judge.

Test with seal of court at Austin this 19th day of August, A. D. 1875.
[L. M. HOPKINS, *Cl'k.*

The marshal's return of service is endorsed on same in words, to wit:

Received this writ on the 8th day of September, A. D. 1875, and executed the same on the 13th day of September, 1875, by reading this writ to George W. Paschal, j'r, and handed him the accompanying writ in person, at Galveston, in my district.

L. D. EVANS,
U. S. Marshal E. D. T.,
By M. K. CAUFIELD,
Deputy.

Sworn to and subscribed before me this 13th day of September, A. D. 1875.

C. DART,
Clerk U. S. Cire't C't E. D. of Texas, at Galveston.
By JAMES T. SPINE, *Dep'ty.*

192 I, Matthew Hopkins, clerk of the circuit court of the United States in and for the western district of Texas, holding sessions at Austin, do hereby certify that the foregoing one hundred and ninety-one pages contain a full and true transcript of the record of case No. 1139, entitled Tho's J. Mehaffy vs. The City of San Antonio, containing all the proceedings had in said cause as they appear of file and record.

In testimony whereof I have hereunto set my hand and the impress of the seal of said court at Austin, this 29th day of September, A. D. 1875.

[SEAL.] M. HOPKINS, *Clerk.*

(Indorsement on cover:) No. 244. The City of San Antonio, plaintiff in error, vs. Thomas J. Mehaffy. W. Texas. C. C. U. S. Filed 18 October, 1875.

O

IN THE

Supreme Court of the United States.

AT WASHINGTON, D. C.

THE CITY OF SAN ANTONIO,
Plaintiff in Error,
vs.
THOMAS J. MEHAFFEY,
Defendant in Error,
} No. 244.

AND

THE CITY OF SAN ANTONIO,
Plaintiff in Error,
vs.
J. C. BARNES,
Defendant in Error.
} No. 245.

BRIEF FOR PLAINTIFF IN ERROR.

In this Brief the Paging at the Head of the Printed Record is Used Only.

The City of San Antonio, Texas, was sued in these cases for the principal and interest on certain bonds and coupons claimed to have been issued by the city authorities, in con-

formity with the 12th section of an act of the legislature of Texas, entitled "An act to incorporate the San Antonio "Railroad Company," approved September 5, 1850, which 12th section is found on pages 34 and 35 of the printed record of No. 244.

In fact, only one of the two cases was *actually* tried—that of Thomas J. Mehaffey—the counsel for both plaintiffs below appearing in it, (Record, case 244, p. 22;) and, as the pleadings in both cases were substantially, and the bills of exceptions and the evidence identically the same, it was agreed that the case of J. C. Barnes "was to abide "the opinion of the court delivered in case No. 1139, Thomas "J. Mehaffey *vs.* City of San Antonio."

Record in case No. 245, p. 14.

The pleadings, therefore, in case 244 were those used and acted upon by the court for both cases, and those pleadings only need be referred to in this brief, and the same will be done in regard to the bills of exceptions and evidence.

There is, however, one point of difference (*which may, perhaps, be material*) in the facts developed by the two cases. Mehaffey sues as a citizen of Virginia, while Barnes was a citizen of New York. The judge, in his opinion, speaks of want of notice to Mehaffey, in Virginia. When he was giving judgment in the Barnes case the fact that Barnes resided in New York was called to his attention, but he did not think that fact modified his opinion about the notice.

Suit was commenced in case No. 244 on March 31, 1870, on two bonds and forty-two coupons, the latter running

from September, 1860, to September, 1869. Suit in case 245 was commenced on May 2, 1871, and the coupons claimed run from September, 1861, to March, 1871. Plaintiffs below claimed that the said bonds and coupons were delivered to them in due course of trade and for a valuable consideration.

Defendant below, excepted generally and specially to the petition, (Rec., pp. 8, 9, and 10.) Plead *non est factum* under oath, (pp. 11 and 12.) General denial, (p. 10.) That the city was not authorized to issue such bonds, and that they are not executed by and are not the act and deed of the city; also, are not under seal of the city, (pp. 10 and 11.) That the plaintiffs below are not the owners in good faith, without notice and for a valuable consideration, (pp. 12 and 13.) That the bonds were not issued in compliance with the requirements of the said 12th section of the act of 1850; also, that they were not issued in accordance with a vote of the qualified electors. That the said act of 1850 was violative of sections 24 and 27 of 7th article of the constitution of Texas. That the contract of the railroad with the city was not complied with, and no consideration was ever given the city for the bonds. That the railroad had forfeited its charter, if it ever had one, before the issue of these obligations, and that a renewal of the charter by the legislature could not operate to revive this claim against the city. That the railroad procured the issue of the bonds by fraud, misrepresentation, and bad management of the company or their agents. That plaintiffs had notice of all this, &c.

Pp. 15, 16, and 17.

The errors of the court below, on which we rely, are—

1st. That the court below erred in sustaining the constitutionality of said 12th section of the act of 1850.

2d. That it erred in holding and finding in effect that plaintiffs below acquired said coupons and bonds for a valuable consideration, and in good faith, and without notice of the fraudulent circumstances attending the same.

3d. That the court erred in holding and finding that the acts of the legislature of Texas of the 14th of February, 1853; 13th February, 1854; 20th February, 1856; 14th November, 1857, and February 1, 1861, had revived and extended the said act of September 5, 1850, so as to hold the city of San Antonio bound for the bonds and coupons issued under said 12th section, without regard to the time of commencing and completing the railroad.

4th. That the court erred in holding and finding that the requirements of said 12th section as regards notice to the voters, and the number of qualified electors voting at the election, had been complied with, or were immaterial.

5th. That the court erred in holding and finding in effect that the plaintiffs below were *bona fide* holders for valuable consideration, and that there was no evidence of notice to them of any infirmity in those bonds and coupons, and that they were innocent purchasers.

6th. That the court erred in holding and finding in effect that the want of the seal of the city of San Antonio to these bonds did not affect their validity.

7th. That the court erred in refusing to sustain the exceptions to the admission of the said act of September 5, 1850; that the same contravened section 24, article 7, of the constitution of the State of Texas.

See Bill of Exceptions No. 1, Rec., page 29.

8th. That the court erred in refusing to sustain the ex-

ceptions to the admission of the act of the legislature of Texas of the 14th of February, 1852, of February 13, 1854; of February 20, 1856, and the other acts mentioned in bill of exceptions No. 2.

Record, pages 29 and 30.

9th. That the court erred in overruling the motion to set aside judgment and for new trial, made by plaintiff in error.

Record, p. 28.

It appears that the railway was never completed. *The facts show that there was never even an honest commencement made.* The witness, Devine, says, (Rec., p. 54:) "Capt. "Beck went out, had a few furrows run with a plough, and "his negroes threw up some earth. It was not a *bona* "*fide* commencement of the road by the company. *No por-* "*tion of the road was completed within three years, and* "*twenty miles were never completed by the company.*" Witness Sweet says, (Rec., p. 59:) "A so-called commencement "was, I think, made within one year of the 1st of Novem- "ber, 1850; exact I cannot state. Some brush was cut and "labor done on the presumed line of the road by Capt. J. "H. Beck, deceased." The witness James says, (Rec., p. 61:) "I can say that one Capt. Beck, now deceased, was "employed by the railroad company to plough some "ground and level it upon a spot upon which the railroad "would probably run, say two or three miles from town. This "was the only commencement made that I know of. As "far as I know none was completed. The S. A. & M. G. "R.R. was sold by trustees in 1859, at which date twenty "miles of the road were not completed."

The facts further show that the city of San Antonio, in the most decisive and public manner, refused to respect these bonds and coupons. (See resolutions of corporation, November 26, 1853, Rec., pp. 66 and 67; and what is said by witness Devine on this subject, p. 57, witness James, p. 61, and witness Smith, p. 63.) It also appears that these bonds and coupons remained at least as late as December, 1857, in the hands of the railway company. (See resolution of corporation of December 9, 1857, Rec., p. 47.) And witness Devine says, (Rec., p. 56:) "These bonds "were under the control or in the possession of the rail- "road company down to the year 1859, or perhaps later, and "were of but little value in the opinion of those who "knew anything respecting the surrounding circumstan- "ces." Who can speak more knowingly about these matters than Judge Devine, who seems to have given his name and great influence towards instilling life into this railway enterprise from the commencement, and who says, (Rec., p. 55:) "I was not willing to incur any more responsiblity "or loss, as I felt reasonably certain that neither our ef- "forts, or those of any other persons in Bexar county, could "galvanize into vitality the railroad enterprise."

And how can these holders of those bonds and coupons pretend that they are holders in good faith and for a valuable consideration, and without notice of all these proceedings and matters which were notorious and public in Texas (and equally so in New York, where J. C. Barnes, or in Virginia, where Thos. J. Mahaffey resided) to all who might feel interested enough to inquire?

It is probable, from the circumstances already detailed, and the further one that the earliest of the coupons sued upon in these two cases was for the interest due September 1, 1860, and from that time continued regularly down to the time of filing the suits, that these parties became pos-

sessed of them about 1860 or 1861. *They have thought best to offer no explanation of the manner in which they became possessed of them.* Is it to be supposed that sane men, whether in Virginia, New York, or Texas, would purchase such obligations at that late date without some inquiry about the circumstances attending them, made at places where they could likely get correct information? *Certain it is* that these bonds and coupons were scattered or distributed around among these holders and other speculators after the sale of the road and its assets in 1859 spoken of by the witness James. (Rec., p. 61.) By whatever means they became possessed of them, it is apparent that they contributed nothing towards compensating San Antonio for their issue. The only part of the railroad ever built "five miles of railroad from the town of Lavaca, "some time during the year 1857 or 1858," (Devine's testimony, p. 54,) was apparently built by Reid and Tracy, who took "a deed of trust on the road-bed and material for "security, and requiring in addition collateral security in "the notes of the citizens of San Antonio to the full ex-"tent of their debt," &c. (Devine, Rec., p. 58.) These bonds and coupons cut no figure in building even that small fragment of the proposed road, which never came nearer to the people of San Antonio than 140 miles!!

As regards the notoriety and publicity of these facts about the "infirmity in these bonds," (as the expression is used in the opinion of the court below, Rec., p. 27,) Judge Devine says (Rec., p. 56) that efforts were made by the company to hypothecate them in New York, but they could get nothing for them, and in 1855 or '56 the president of the railroad company having again set out to make a trade with them to the New Yorkers, "one or two miles "from the city," (San Antonio, *not* New York,) "his trunk "was taken from the boot of the stage, cut open, and plun-

"dered of its contents. The thieves did not take the city "and county bonds that were in the trunk; when he ob- "tained his trunk the bonds were likewise recovered." (Even the highwaymen knew that these papers were too "infirm" to make it worth while to steal them.) On Rec., p. 55, this witness says he went to New York and Boston, to try to hypothecate them, in 1853, but "our efforts were "unavailing. The resources of the company were con- "sidered of little value." * * * The city and county bonds could have been sold for twenty-five or thirty cents on the dollar. "We were offered a trade for the city and "county bonds by an old acquaintance of Mr. Jones. The "consideration was to have been carts, wheelbarrows, picks, "spades, shovels, and slop-clothing, suitable for railroad "laborers. Mr. Jones was in favor of the trade, believing "that this, in connection with resources of our own, would "enable us to make a commencement on the road, and "something favorable would, in the meantime, turn up." But Judge Devine did not want to incur any such respon- sibility, so he says: "We then went to Boston; remained "there about twelve days, when I started for San Antonio, "taking with me, with the consent of Mr. Jones, the rail- "road company's and the city and county bonds as we re- "ceived them," &c., and when he reached San Antonio he "turned over to the company all the bonds received, with "the coupons attached." (Rec., p. 55.) This witness gives us clearly to understand, in his answers to cross-interroga- tories, (on pages 56, 57, and 58,) that all business men in New York and Boston who felt any interest in such in- vestments fully comprehended the situation, and it seems that even as early as the summer of 1853, (*before* the cor- poration of San Antonio had adopted the formal resolution condemnatory of the bonds, found on pages 66 and 67,) the largest offer made for the bonds was "twenty-five or thirty

"cents on the dollar," and this, so to speak, in "chips and "whetstones." And witness James says, (Rec., p. 61:) "Really, everybody considered them worthless at home. "The reason why they could not be negotiated was, that "myself and others advised our friends in New York that "we held they were illegally issued," &c. * * * "The "acts and doings between the city of San Antonio and said "railroad company were known to many New York mer- "chants who sold goods to San Antonio merchants, of "whom New York capitalists and railroad men would in- "quire. Among business men these bonds were generally "considered to be of little, if any value." And note what he says in answer to cross-interrogatories 10 and 11. (Rec., pp. 62 and 63.) Another witness, Mr. Sam. S. Smith, (who, with Judge Devine and Mr. James, had been among the directors of the railroad company, also alderman of the city for several years and city treasurer,) says: "The facts "of the non-completion of this road were well known in "this county as early as '52 and '53. These actions were "publicly and generally known by the municipal authori- "ties instructing the collector to discontinue the collection "of the railroad tax, the people generally refusing to pay "the tax," &c., &c., (Rec., p. 63,) and in answer to the 10th cross-interrogatory he says, speaking of this notoriety: "They were known generally to the people of this county. "I was county clerk at the time, and my business brought "me in contact with nearly all the people of the county."

All the decisions of the Supreme Court of the United States which have sustained holders of similar obligations as against efforts to show that same were irregularly issued, or fraudulently procured, have gone upon the theory that

the holder was one in good faith, and without notice of such irregularities or fraud. The following are instances:

McClure *vs.* Township of Oxford, 4 Otto, 429.
Town of Coloma *vs.* Eaves, 2 Otto, 484.
Town of Venice *vs.* Murdock, Ib., 494.
County of Moultrie *vs.* Rockingham, Ib., 631.
Chambers County *vs.* Clews, 21 Wallace, 317.
Town of Queensbury *vs.* Culver, 19 Wallace, 83.
Lynde *vs.* The County, 16 Wallace, 6.
St. Joseph *vs.* Rogers, Ib., 644.
Grand Chute *vs.* Winnegar, 15 Wallace, 355.
Smith *vs.* Sac County, 11 Wallace, 139, &c., &c.

In Smith *vs.* Sac County the circumstances were much like those developed in these cases. The bonds were issued for the building of a court-house. In the issue the forms of law were followed, and the bonds had passed into possession of one who claimed to be a holder, without notice, and for a valuable consideration. It was held that the holder should prove that he purchased for value, and that the mere general denial in the pleadings of the defendant was sufficient to put the holder on this proof. The Justice (Miller) delivering the opinion quotes, approvingly, Hall *vs.* Featherstone, 3 Hurlstone & Norman, 284; 2 Parsons on Notes and Bills, 438, and Story on Promissory Notes, 196.

There was an attempt made by the defendants in error to show that the legislature had, by subsequent amendments of the act of 1850, cured the forfeiture of that charter, and remedied the failure of the railroad company to comply with its requirements in building the road. But defendant below objected to the introduction of these acts or amendments. (See Bill of Exceptions, No. 2,

Rec., pp. 29 and 30.) The objections made all seem proper, but we will now only consider the fourth, which is to the effect that if said several acts are introduced for any purpose, this can only be to revive a claim against the people of San Antonio which had ceased to have any vitality, or, in other words, to create a *new contract* for the people of San Antonio, without consulting them, by retroactive acts. The people of San Antonio are not shown to have ever accepted these amendatory acts. The judge below seems to have construed them as a waiver by legislative authority of the failure of the road to comply with its contract, and he accepted the decision in San Antonio *vs.* Jones, decided by the supreme court of Texas, in 28 Texas, p. 32, as decisive of the question. In that case the facts were not presented as in this. But, further, the judge seems to have entirely overlooked the previous decision of the same court in 17 Texas, 561, Henderson *vs.* Railroad Company, when this *same railroad* and these *same amendatory acts* (or rather the first of them) were before the court. The court then said: "At the instance of "the defendant the court (below) further instructed the "jury 'that the time limited in the charter for beginning "' and completing the road having been extended by the "' legislature, the time limited in the original charter'" * * * * "' was not of the essence of the contract, and "' the failure to complete the road, or any part of it, with-"' in the time does not discharge the party from his con-"' contract.' The propriety of giving this instruction is, "to say the least, very questionable. In so far as it im-"plies that an extension of time by the legislature could "have the effect, as between the company and third per-"sons, of releasing the former from the obligation of their "contracts, or could affect the rights of the parties to the "contract in question, we cannot assent to the doctrine."

* * * * "We must suppose it was within their con-
"templation that the road would be constructed, if not lit-
"erally within the time stipulated, at least within some
"reasonable time, regard being had to all the circum-
"stances, and that that expectation was the essential in-
"ducement to the contract." * * * * "It certainly
"is not a reasonable supposition that it entered into
"the intention or contemplation of the parties to the con-
"tract that the time for its construction might be ex-
"tended by legislative enactment, from time to time, in-
"definitely." It is true the United States Supreme Court, in The City *vs.* Lamson, 9 Wallace, 477, held that a subsequent act of a legislature might make good or recognize deficient authority in the issue of obligations, but in that case there had been no submission to the vote of the people of the contract. The same thing may be said about the case of Beloit *vs.* Morgan, 7 Wallace, 619. In Campbell *vs.* City of Kenosha, 5 Wallace, 194, the matter of the contract had been submitted to a vote of the people, and a ratification by the legislature and the corporate authorities was held sufficient. But in this case the only effect of the ratification was to correct a technicality in the manner of submission to vote, and the road had been in good faith completed, the city had received the consideration for its bonds, and the bondholders were *bona fide* holders for value. And the case of Hasbrouck *vs.* The City of Milwaukee, 13 Wisconsin, is a strong authority against the power of the legislature to enact any such amendatory or reviving provisions; also, 29 Wisconsin, 413. And we will say, further, that we believe no case has ever gone to the extent of declaring that an act of the legislature shall be construed to have such a purpose as against parties whose interests might be affected by contracts reconstructed or revived thereunder, unless in *express terms* such act of

the legislature declares that purpose. This we think is intimated by Judge Cooley. (Cons. Limitations, 3d ed., 381, 382, and notes.) In the pending cases the acts claimed as reviving this contract against the City of San Antonio do not mention, even inferentially, such design on the part of the legislature. And see Marsh *vs.* Fulton County, 10 Wallace, 681, as against power of legislature to make a new contract.

The constitutionality of the 12th section of the above act of 1850, as well as of the amendatory acts, which we have considered as affected by section 24, article 7, of the constitution of the State of Texas, was raised by the pleadings and by the bills of exception which we have already referred to. That section of the constitution reads: "Every "law enacted by the legislature shall embrace but one "object, and that shall be expressed in the title." The constitutionality of the 12th section has been more or less directly considered by the supreme court of Texas in four cases—San Antonio *vs.* Enoch Jones, 28 Texas, p. 19; San Antonio *vs.* William G. Lano, 32 Texas, 405; San Antonio *vs.* R. S. Gould, 34 Texas, p. 49, and G. H. Giddings *vs.* San Antonio, decided April term, 1877, at Austin, Texas, (yet unpublished.) The first of these cases can scarcely be considered as deciding the question, the matter not being fully argued. The second case sustained the constitutionality of it. The last two decided that the section was unconstitutional as violative of the above-cited provision of the constitution of 1845, then in force. The last of these cases rests entirely upon the unconstitutionality of that 12th section, and held the bonds issued under it to be void. The Supreme Court of the United States

1869
1871
47 Texas 548,

has a number of times intimated that it will be governed by the decisions of the highest State court in the construction of the statutes of the State—for instance, 17 Wallace, 648; 13 Wallace, 306—but they have also held that where the decisions of the State judiciary at the time the contract was made had declared such contract valid, or had maintained the validity of similar contracts, then they would not follow subsequent decisions of the State court, declaring such contracts invalid. (16 Wallace, 678, Olcott *vs.* The Supervisors; Chicago *vs.* Sheldon, 9 Wallace, 50; Lee County *vs.* Rogers, 8 Wallace, 181, and Gelpcke *vs.* Dubuque, 1 Wallace, 175.) That court has also held in a recent decision (which we believe is not yet published in the official reports) of a case from Illinois, that when the opinions of a State supreme court have *varied* in the construction of a State statute, and when rights may have grown up under the former construction given by the State court, they will adhere to such former construction in preference to the later.

But, we respectfully submit, no rights in regard to these bonds and coupons can have arisen in good faith under the decisions which we find in 28 Texas and 32 Texas, as these were made several years after the war and many years after these parties must have become possessed of their bonds. The decision we have quoted from in 17 Texas, was made in 1856, and was the only expression from our Supreme Court when these parties became possessed. It certainly was decisive of their right to sue, as it settled the points that time *was an essential part* of the contract made with this company, and that the legislative amendments or revivals could not extend that time so as to bind parties who had contracted with the company, without their consent. And, according to the rule adopted by the Supreme Court of the United States, that case in 17 Texas,

as it was the first decision on the question of those amendments, must be followed in preference to the case in 28 Texas, even if the latter should be considered a direct adjudication of that question.

But, on the issue of constitutionality of the 12th section, we do not find on a scrutiny of the decisions of the United States Supreme Court, that any of them now precludes this court from accepting the decision in 34 Texas, and that of Giddings *vs.* San Antonio, (unpublished,) as the *true* construction of that statute. There is no appearance or similitude of honesty about these holders. There is no good faith to sustain, no valuable consideration to return. The whole proceeding, from commencement to the end, was a fraudulent sham. Nobody can have been deceived, and no purchase can have been made of these obligations unless merely as a speculation, and we cannot imagine that speculators such as these are entitled to any particular favor from the courts. They have gambled in these securities, probably, just as other gamblers stake their money on the turn of a card.

But in the pending cases the constitutionality of those amendatory acts (which appear on the Rec., pages 70 to 74) as affected by 24th section, art. 7, of the Constitution, was for the first time raised, (Bill of Ex., No. 2, Rec., p. 29.) The two first of these acts (on the first of which these suits must hang, if at all) speak in their titles of the act to which they purport to be supplemental as "An act "to incorporate the San Antonio Railway Company." But the body of the supplemental acts term it "the San Anto-"nio and Mexican Gulf Railway Company;" and if this objection should be considered as immaterial, and as one capable of explanation by the body of the respective acts, yet there was the further objection (which cannot be disposed of so easily) that neither of these two

acts, nor of any of the others, does, in fact, revive, *or pretend to revive*, the authority of the city corporation to issue those bonds. Now, if that was any part of the purpose of the act, it should have been expressed in the title. That first supplemental act is the main one relied upon to show that the railroad company was *revived*, and that the act of Mayor C. F. King in signing and issuing the bonds was legitimated, and the railroad company was an existing company and not already expired. But the title does not indicate any intent even to revive the company. Surely, unless that section of the Texas constitution is to be treated as a mere shadow, the title should *at least* have declared the object to be "to revive and extend" the charter of 1850. (Cannon *vs.* Hemphill, 7 Tex., 208; Mayor *vs.* State of Georgia, 4 Ga., 38.) An inspection of the body of that first supplementary act, (Rec., 70 and 71,) and a comparison of its contents with its title, curiously indicates the double dealing, evasion, and devious management which seems throughout to have characterized this company. The title of this act reads: "An act supple-
" mental to an act to incorporate the San Antonio Railway
" Company, approved September 5, 1850." Yet the first section provides for a grant of the public lands of the State to the company to the extent of eight sections to the mile, and we may reasonably infer, we think, that this was the *main* purpose of the supplement. The body of it nowhere, in so many words, revives or extends the charter, but apparently seeks to do this *indirectly* by the proviso at the end of the third section, which reads: "That no
" land shall be donated unless the company shall actually
" commence their road within two years, and actually com-
" plete and finish at least ten miles within three years." The road had forfeited its charter *already* when this act

was passed. There was nothing existing that this could supplement.

Another question was raised and decided in 34 Tex., 49, 1871 touching the validity of these bonds, which had not come before the court previously, and it was also raised in the pending cases. (Rec., p. 10.) The common law was adopted in Texas by the act of January 20, 1840, (Pasch. Dig., 978,) and it is noticeable that when that rule of the common law which requires a seal to such specialties (Angell and Ames on Corporations, 217, 223; 4 Kent's Commentaries, 452) was repealed in 1858, so far as applicable to some writings, (Pasch. Dig., Article 5087,) those made by corporations were excepted: "No scroll or pri-"vate seal shall be necessary to the validity of any con-"tract, bond, or conveyance, whether respecting real or "personal property, *except such as are made by corpora-"tions*," &c. The opinion of the judge below makes light of this defence because "the city had and used no common "seal," and because she "is equitably estopped from set-"ting up the want of a seal to her obligations given in "payment for property which she has held for more than "20 years, and still holds." (Opinion of Judge Woods, Rec., p. 27.) But if San Antonio had no common seal the corporation authorities failed to obey the law, which required one, and their acts of this nature, performed without one, were invalid, as held by our State supreme court. And as regards the "property" held by San Antonio for more than 20 years, with all deference we must say that it is *not* apparent that the privilege to San Antonio of having her name inscribed as a stockholder in the books of the bogus concern called the San Antonio and Mexican Gulf Railway is such valuable property as to quite equal $50,000 gold-bonds and

seven per cent. interest, compounded, for those 30 years. We think the people of San Antonio had a right to expect something more substantial from that contract.

On the issue that was raised touching the notice to voters and the number of qualified voters who should have voted on this contract under that section 12, we think the evidence sustained the allegations, and that the judge was mistaken in his conclusion that these holders were purchasers "without notice of the fact" of the irregularities attending those proceedings. Under the circumstances, these parties must be considered as fairly warned and put upon their guard. We concede that the decisions of the United States Supreme Court discredit such defences as these where the authorities issuing the bonds had been duly empowered to take the vote of the people, and had certified (as in this instance) that the debt was "authorized "by a vote of the electors," but we understand those decisions to be only applicable to *bona fide* holders for value, and that in every one of them the consideration for the issue of the bonds had been received by the obligor—the work had been performed. If in this respect we are not in error, then the evidence on these points will have some bearing. The then paramount law (the Constitution of Texas of 1845) provided, in section 1st, article 3d, that "Every free "male person who shall have attained the age of twenty-"one years, and who shall be a citizen of the United States, "or who is at the time of the adoption of this constitution a "citizen of the Republic of Texas, and shall have resided in "this State one year next preceding an election, and the "last six months within the district, county, city, or town "in which he offers to vote, (Indians not taxed, Africans "and descendants of Africans excepted,) shall be deemed

"a qualified elector." Now, at that election "
"were allowed to vote who could show that they
"taxes; I think none others." (Testimony of
p. 61.) Only nineteen days' notice was given of the elec-
tion. (Nath. Lewis, Rec., p. 52.) "Under the then ex-
"isting charter nobody could vote unless he had paid his
"city tax, and this would exclude all non-property owners
"from presenting themselves to vote." (Testimony of S.
S. Smith, Rec., p. 65.) We refer to these questions mainly
because they were raised in the court below. They, and
the evidence to sustain the allegations on which they are
based, are not necessary to our defence in these cases. We
believe ourselves amply fortified elsewhere, and that we
have, without them, ample defence.

EDWARD J. DAVIS,
DURANT & HORNOR,
For Plaintiff in Error.

IN THE

Supreme Court of the United States.

October Term, 1877.

THE CITY OF SAN ANTONIO,
PLAINTIFF IN ERROR,
vs.
THOMAS J. MEHAFFEY.
No. 244.

In Error to the Circuit Court of the United States for the Western District of Texas.

ADDITIONAL BRIEF FOR PLAINTIFF IN ERROR.

March 31, 1870, Thomas J. Mehaffey, a citizen of Virginia, sues to recover the amount of certain coupons on bonds of the city of San Antonio, executed March 1, 1852, in pursuance of a law thereto authorizing it, payable to the San Antonio and Mexican Gulf Railroad Company, or bearer, and bearing interest at seven per centum per annum. He prays for judgment for three thousand dollars and interest, &c.

It is also averred by petitioner "that in the due course "of trade, and for a valuable consideration, the said city "of San Antonio heretofore, to wit, on the 1st day of De-

"cember, 1867, executed and delivered to your petitioner "its certain due-bills or coupons for a valuable considera- "tion, in the due course of trade," &c.

See petition, Rec., pp. 2 to 8.

June 9, 1870, the city filed a plea in abatement, under R. S., 629, (1 S. L., 78.) In connection therewith a special demurrer, on the grounds of want of allegation that the bonds were under seal or were ever delivered; or that the bonds were made in conformity to law of Texas; or that the railroad ever was a corporation under any law of Texas; or that the bonds were not fully paid before petition filed; or that any consideration was ever paid by railroad or received by city; or that any demand had been made for payment of the coupons; or that the issuance of the bonds was not beyond the authority of the city corporation under the laws of Texas; or that the city could make delivery of the coupons; or that the petition discloses any cause of action, and for other causes.

And for farther answer, that the bonds were made in fraud of law, and were obtained by Mehaffey in fraud of law.

That neither bonds nor coupons were ever presented for payment. That they were never issued in conformity to the constitution or any law of the State of Texas, and that plaintiff had both actual and constructive notice thereof before he acquired them with the fraudulent intent to wrong the city out of the respective sums of money, and the interest thereon, as claimed in the petition. That said bonds and coupons are not the act and deed of and were not executed and delivered by defendant. That said railroad company never was organized and never had user as a corporation; and forfeited all such rights as it might have obtained under its charter, while in possession of and

claiming title to the coupons sued upon, and before they were delivered or in any manner transferred to plaintiff, with full notice, who never obtained title to the coupons, and is not the owner thereof. That the bonds and coupons were obtained in fraud of law March 1, 1852; that the bonds have no contract-words showing when payable; are not under seal in lieu thereof, and are barred by the statute of limitations. That the bonds and coupons do not on their face purport to be bonds, but amount only to certificates made by King and Buquor, and not by "the mayor "and aldermen of the city of San Antonio;" contain no contract-words, recite no consideration, are not under seal, and are on their face null, void, and of none effect. Then a plea of *non est factum*. Then an amendment denying plaintiff a purchaser in good faith, before maturity, for valuable consideration, and averring the very reverse, and that he is the simulated and fraudulent owner of bonds and coupons, and suing herein for the benefit of an unknown third person, also with notice of the fraud.

February 3, 1872, a farther answer was filed, averring no cause of action set forth in the petition; that plaintiff was bound to seek payment out of another fund specially provided by law before making the city liable; that the allegations of the issuance of the coupons are too vague, indefinite, and uncertain; and praying judgment as in general demurrer.

On the same day an amended answer was filed by leave of court, in which, after reserving the benefit of their general and special demurrers, they plead finally as follows:

1st. No such corporation as the San Antonio and Mexican Gulf Railroad Company; that if the coupons were issued at all, the mayor of San Antonio had no authority in law to issue them.

2d. That plaintiff, combining, &c., with the pretended officers of that pretended railroad to defraud &c., &c. defendant, did fraudulently and wrongfully obtain possession of said coupons knowing they were void and worthless, and if issued were without consideration, and would not be paid by this defendant.

3d. That the coupons were not issued in accordance with a vote of the qualified electors of San Antonio and of an act to incorporate the railroad, approved September 5, 1850, nor in pursuance of the acts, ordinances, *etc.*, of the mayor and board of aldermen of said city, nor in the legitimate discharge of the lawful power vested in them by the constitution and laws of the State of Texas.

4th. That the charter of said railroad was unconstitutional and void as in conflict with 24th and 27th sections of article 7 of the constitution of Texas at the time of the approval of said act.

5th. That the terms of the act enabling railroad to contract with the city were not complied with; no mutuality, no consideration.

6th. That if ever there was a valid contract between railroad and city, which is denied, it has been forfeited, because (*a*) the charter had expired before coupons were issued; (*b*) that a renewal thereof without consent of San Antonio could not operate to revive or renew the assumed contract, for this legislation would be retroactive and void; that the city was deceived and defrauded by railroad company, its officers and agents, in the issuance of bonds and coupons, if issued at all; of all which plaintiff had notice.

7th. That the coupons were settled by a new contract in

1855, in which railroad agreed to accept $5,000 from the city in full satisfaction of all the bonds and coupons issued by the city; which contract the railroad fraudulently prevented the city from carrying out.

8th. That the coupons could not bear interest till merged in a judgment.

9th. That for the confederation of plaintiff with the railroad, and the wrong and fraud of both upon defendant, damages for $5,000 are pleaded in reconvention.

10th. That the city denies all and singular, &c., &c., not herein specially denied.

Prayer, that said coupons be cancelled and plaintiff perpetually enjoined from proceeding farther upon them.

Record, p. 8 to 17, inclusive.

January 18, 1875, the petition was amended, showing the maturity of the bonds and their non-payment, as well as of the forty-eight coupons originally attached thereto. The prayer is for judgment for the whole amount of principal and interest due upon said bonds Nos. 3 and 4, and upon the coupons thereto attached, and costs.

Record, pp. 19, 20, 21.

The jury was waived, (Record, p. 23;) a finding of facts by the court, (Record, p. 31 to p. 74, both inclusive;) a trial and judgment for $5,125.40, (Record, p. 23;) an unsuccessful motion for a new trial, (Record, p. 28,) and finally a writ of error bringing the case before the appellate court.

Texas, on September 5, 1850, passed "An act to incor- "porate the San Antonio Railroad Company." The twelfth section empowered the mayor and aldermen of the city of San Antonio to subscribe to the capital stock of said company to an amount not to exceed $50,000, with a proviso that such subscription shall not be made "unless "two-thirds of the electors of said city * * qualified to "vote for town or city officers, at an election to be held "for that purpose, shall vote in favor of such subscription "being made."

Record, p. 34.

December 4, 1850, the city council passed a resolution ordering an election "for the purpose of taking the votes "of the qualified electors of San Antonio on the question "of subscription, the vote to be taken at the same time "and to be governed by the same rules as prevail in the "election of city officers."

Rec., p. 36.

December 30, 1850, election held, and at the closing of the polls, 253 votes were found in favor of subscription and 3 votes against.

The provisions of the statute were not complied with as to the legal notices, and the election seems to have been held on the same day as the election for municipal officers.

February 24, 1851, San Antonio passed an ordinance to subscribe for $50,000 of the capital stock of the San Antonio & Mexican Gulf Railroad Company, and *April* 26, 1852, a resolution "to meet, from time to time, the in- "terest on the capital-stock subscription to the San An-

" tonio & Mexican Gulf Railroad Company." And, *eo die*, another resolution providing for the issue by the mayor of city bonds to the amount of $50,000 whenever required, under 13th section, act September 5, 1860.

Record, p. 46.

The bonds went at once into the possession and control of the railroad company, who delivered them in *April*, 1853, for negotiation to Thomas J. Devine, who repaired to New York and Boston, and, in the fall of 1853, effectually tried those money markets to ascertain at what rates the bonds of the railroad company and of the city of San Antonio and of the county of Bexar could be disposed of. The company's bonds were worth nothing. "The city and "county bonds could have been sold for 25 or 30 cents on "the dollar." "The investment to a New Yorker in San "Antonio bonds was not a desirable or even a prudent in- "vestment in the slightest degree." "The effort" (to dis- "pose of the bonds) "was made to at least twenty or more "capitalists." A newspaper, called "the San Antonio "Ledger," was sent to New York, "to all that it was sup- "posed we would come into communication with, and the "result was that although the bonds were worth but little "as objects for investment, they grew in the opinion of all "who read the paper referred to, or who heard of it, "to possess even less value. The city and county shortly "after refused to collect the interest tax, and the bonds "grew from worse to worse."

Testimony of Devine, Rec., p. 54 *et seq.*

Shortly after Devine's return to San Antonio, in the fall of 1853, the bonds were turned over to the company, "with the coupons attached." In 1855 or 1856 the bonds

were in the president's trunk *in transitu* to New York from San Antonio. "One or two miles from the city his "trunk was taken from the boot of the stage, cut open, "and plundered of its contents. The thieves did not take "the city and county bonds that were in the trunk. When "he obtained his trunk the bonds were likewise recovered. "*These bonds were under the control or in the possession "of the railroad company down to the year* 1859, *or per-"haps later*, and were but of little value in the opinion of "those who knew anything of the surrounding circum-"stances."

Testimony of Devine, Record, p. 56.

December 9, 1857, San Antonio received and spread upon the minutes the communication of the president of the San Antonio and Mexican Gulf Railroad Company, "withdrawing the proposition of said company made in "January, 1855, to cancel the subscription of the city to "the capital stock of the said company, the bonds of the "city issued and delivered in payment for said stock to "be delivered up to the city."

Record, p. 47.

From 1859 *down to March* 31, 1870, *the institution of this suit, the record is silent as to the whereabouts of the bonds and coupons.*

The bonds are numbered three and four. The coupons run from September 1, 1860, to March 1, 1872, inclusive. The judgment seems to have been entered up on the following basis, viz:

Two bonds, each $1,000, Nos. 3 and 4, redeemable after March 1, 1872		$2,000 00
Twenty-four coupons, $35 each, on bond No. 3	$840 00	
Twenty-four coupons, $35 each, on bond No. 4	840 00	
		1,680 00
Interest from March 1, 1872, to February 6, 1875, date of judgment, at 7 per cent., on face of bonds, $2,000, 2 years, 11 months, 23 days		426 88
Interest from September 1, 1866, (average,) to February 6, 1875, on coupons, $1,680, at 7 per cent., 8 years, 5 months, 23 days		1,002 28
		$5,109 16

Amount found by the court, $5,125.40.

ASSIGNMENT OF ERRORS.

I. The court below was without jurisdiction.

II. The court below erred in treating Mehaffey as a *bona fide* holder for value, and as having acquired the bonds and coupons in the due course of trade, and in holding that the city executed and delivered the bonds and coupons on December 1, 1867.

III. And in holding that these bonds and coupons were like unmatured promissory notes and bills of exchange, and treating them as such in the hands of a third person.

IV. And in holding that the burden of proof was on the city to show the want and failure of consideration for bonds and coupons.

V. And in holding that there was no want or failure of consideration for them.

VI. And in treating the municipal corporation known as the city of Antonio as a person *sui juris*, when it should have been treated and held as a juridical being, *alieni juris*, entitled to the favor and protection of the law just as much as any one under age. *Rempublicam ut pupillam.*

VII. And in holding that the bonds were issued under full and lawful authority; that the *onus* was on the city to bring notice of any infirmity in these bonds or coupons to Mehaffey.

VIII. And in not holding that the bonds and coupons were null and void in the hands of Mehaffey, because—

(*a*) The act was unconstitutional, because it embraced more than one object, in violation of the constitution of Texas, section 24 of article 7.

(*b*) That there were no regular and legal formalities, as provided by statute, as prerequisites for the subscription to shares and the issuance of bonds; particulars;—no notice of twenty days previous to such election being held; no two-thirds of qualified electors voting; no election "*for that* "*purpose*" alone ever taking place.

(*c*) The legislature of Texas exceeded its powers in striving to empower the city to subscribe, and to tax for payment of principal and interest. The building of the railroad was not within the sphere of municipal authority, and could not be brought within it by any legislation.

(*d*) The exercise of the legislative power being conditioned upon a vote of the people of the city in their pri-

mary capacity, in the first instance, no farther exercise of the legislative power on the same subject-matter to repeal, extend, modify, relieve from forfeiture actually incurred under the charter of the railroad, was constitutional without the vote of the same people in its favor. Such farther exercise of legislative power impairs the obligation of the contract between the city and railroad, and is unconstitutional and void.

IX. The judgment is for too large an amount, and awards interest where none is payable.

X. That the lower court erred in holding and finding that the Texas acts of February 14, 1852, February 12, 1854, February 20, 1856, November 14, 1857, and February 1, 1861, had revived and extended the said act of September 5, 1850, so as to hold the city of San Antonio bound for the bonds and coupons issued under said section twelfth without regard to the time of commencing and completing the railroad, and in admitting in evidence the said acts, in spite of the objections set forth in the bill of exceptions, pp. 29 and 30 of the record.

XI. That the action is in whole or part prescribed.

ARGUMENT.

I. The bonds in suit are certificates that the corporation of San Antonio is indebted to the president and directors of the San Antonio and Mexican Gulf Railroad Company, or bearer. They are transferable by delivery not only by the expressed language peculiar to negotiability, "*or bearer*," but by another clause in the bond it is declared "entered "and recorded in the office of the city treasurer, and is "*transferable on delivery.*"

These bonds, then, are choses in action, and this fact suggests at once the want of jurisdiction in the court below, which is the first assignment of error. Mehaffey is the assignee of the railroad, from whom all his rights are derived. If no assignment had been made, it is quite clear the company could not have sued in the United States court to recover the amonnt from the city.

1 S. L., 79, sec. 11, Judiciary Act; R. S., 629.

The coupons are identified with the bonds, to which they are mere accessories. The case is very different from a suit on a bank bill or note, payable to bearer, to which the case Bank *vs.* Wister (2 Peters, 326) applies.

II. The bonds being the principal and the coupons the accessory obligation, was Mehaffey, by the mere fact of possession of them, presumptively and legally a *bona fide* holder for value, acquiring them in the regular course of trade?

We deny that these bonds are either promissory notes or bills of exchange; they are, to a certain extent, negotiable; but not negotiable like commercial paper.

All negotiable paper is *payable* to order or bearer. But where the paper evidences a *commercial* contract for any purpose other than the payment of money, it is certainly not a promissory note or bill of exchange. Government bonds are not made *payable*, but *redeemable;* and this takes away at once an essential element of all bills and notes. These principles will not be denied. (See the bond on page 23.)

Nor will the legal presumption that, in the absence of proof, the holder of bills and notes acquired them before maturity, *bona fide*, for value, and without notice of any defence, be controverted; but the application of this pre-

sumption to bonds and coupons of municipal corporations, issued under legislation ostensibly to build railroads, but really to weaken, if not to destroy, the institution of private property, is *the gift of a judicial sanction to this legislation.* It fastens the burden of it for generations upon innocent parties. It encourages the easy getting of something for nothing. It introduces into the States of the American Union a power to oppress, ruin, and destroy, unknown to the prior, semi-barbarous government of Mexico formerly controlling the destinies of "San Antonio."

The modern tendency is undoubtedly to "commercialize" everything. The municipal corporations, originating in the regular devolution of the powers of the State over the citizens, cannot be made into large trading companies and identified with private corporations. It is true they are under the absolute will and hold their existence at the mere breath of arbitrary discretion of the legislature. But their "buying and selling" cannot be extended beyond the sphere of their legitimate action, without so violent a shock to the whole societary system as to disturb for years the quiet and peace of the community. It is true even a State or the Nation may engage in commercial transactions; may establish banks, issue promissory notes, draw and accept bills of exchange; and then it is but common justice to regard them as natural persons *pro hac vice;* and, as such, liable in like manner for all the consequences of their commercial acts. But still the distinction is ever maintained between the public corporation and the individual trader—between the State and the bank it charters. The capacity to act is vastly different in each, as we shall hereafter show.

"Now it seems to me to be confounding things which "are essentially unlike to apply to such a transaction be- "tween nations the commercial usages in relation to bills

" of exchange, merely because one of the instruments exe-
" cuted between the parties is in that form and called by
" that name."

C. J. Taney in 2 Howard, 755, Appendix.

The *form* of making obligations, too, has greatly changed of late, in obedience to the aforesaid tendency. How facilitate the circulation of wealth was the question propounded. Instead of the old-fashioned mode of calling at the Treasury and collecting semi-annually the interest as it accrued, and where nothing but an actual receipt in writing, from the creditor or his agent, would realize the money, (as now in the case of registered bonds,) our ingenious fellow-republicans devised the coupon bond, in which both coupon and bond in full ownership pass by simple delivery from hand to hand. First came the bill of exchange, then the promissory note, then the check, and lastly the coupon bond. In the interest of commerce all these became subjects of the law of commerce, and negotiability, *i. e.*, passing to order or to bearer, was attached to all of them. The rights of the *bona-fide* holder for value before maturity, in the case of *personal* obligations assuming these forms, cut off all defence, as a rule. So in the case of these coupon bonds being lost or stolen, the holder who had bought them before maturity in good faith from the thief successfully resisted the claims of the real owner. Both bonds and coupons in such cases have all the qualities of commercial paper, as well as its incidents. The disputes coming before your Honors have been in various shapes, and the commercial rules in regard to negotiable paper always enforced in the strictest manner, even against municipal corporations. It seems as if the judiciary, having been compelled, as it were, to sanction that most

abominable and ruinous exercise of legislative power, authorizing municipal corporations to subscribe to railroads on votes of their citizens, were determined to carry out the consequences of the first step and clothe the juridical being with all the legal accoutrements of the equipped merchant —a thing simply impossible.

Here Mehaffy relies upon the presumption of the law that he is the *bona-fide* holder for value before maturity. We contend that this presumption is entirely overcome by the facts of the case.

First. The form of the bond and coupons, which, in these cases, is *matter of substance.* (*a*) No seal of the corporation. (*b*) Indebtedness to the president and directors, but not to the railroad company. (*c*) Redeemable, not payable. (*d*) Reference to legislative act for the authority to acknowledge indebtedness. (*e*) The coupons are mere due bills, I. O. U.'s, containing no promise whatever to pay; in this respect entirely different from the coupons on the United States bonds now issued.

Second. The positive non-negotiability of the bonds, in the great money-markets of the country, for want of a credit-qualification.

Third. The utter failure of consideration, in the non-existence, up to this day, of any *real* railroad.

Fourth. The non-presentation for payment of any of the coupons prior to March 1, 1861; the intervention of a long civil war; the citizenship of both parties to the suit—one in Alexandria, Virginia, and the other in Texas; no demand prior to the institution of the suit, March 31, 1870; and the unproved allegation in the petition, that the city of San Antonio, on December 1, 1867, executed and delivered the due bills or coupons for a valuable consideration.

Fifth. The past maturity of the coupons prior to September, 1870; that is, 24 out of the 40 coupons unpaid—each $35—at the institution of the suit. The coupons amounted to $840—on each bond for $1,000—on the day of judgment. The fruit is heavier than the tree which produces it, (5 Cranch, 319;) and it is quite unreasonable to say, in the light of these facts, that this commercial paper was NOT DUE, and, in mercantile parlance, was not "DISHONORED" when Mehaffey acquired it.

Sixth. If the allegation of Mehaffey be true, (and it is quite incredible to the juridical consciousness,) that he acquired bonds and coupons from the city on December 1, 1867, the city's act was *ultra vires* and void *ab initio* for the whole. Admitting, *a. g.*, the city could subscribe to railroad shares, and issue its bonds and coupons in payment, one exercise of the power by one issuance of bonds and coupons will suffice to exhaust the authority. To go farther exacerbates the social ulcer.

The Mayor *vs.* Ray, 19 Wall., 468.

III. The fourth and fifth assignments of error regard the burden of proof.

Our contention is that the *onus probandi* was thrown by our proofs upon the plaintiff below; and even if wrong in this, there was full proof in the record that the city has never received, directly or indirectly, any consideration for the $50,000 bonds and $70,000 coupons. The court below refers to the 500 shares of stock in the railway subscribed by the city; but there is no proof that any certificate was ever issued for them, and the history of the road is summed up in the witness' declaration on Record, page 58: "The "work was AN ABORTION from first to last."

It seems a singular misconception of the true nature of

this suit to apply to its solution in favor of Mahaffey the doctrine of equitable estoppel. It is the city of San Antonio who is resisting a gross fraud attempted to be practised upon it. Although legislation, as in this instance, is the very instrument by means of which the fraud is to be initiated and carried out, it must not be supposed that the judiciary will add to its powers an additional legal instrument in the shape of an estoppel.

IV. As to the sixth assignment of error, the principle announced is one of universal application, and is very old. The modern instances are all the appeals in this court from the decrees of the Court of Claims. Flanders *vs.* Tweed, 9 Wall., 425, is another instance. Indeed, without such a principle no government could exist—not even a republic—so long as the commercial system predominates over agriculture and manufactures. *Qui cum alio contrahit, vel est, vel debet esse non ignarus conditionis ejus.*

Pandects, 50, 17, 19. *De regulis juris.*
Mumma *vs.* The Potomac Co., 8 Peters, 281, 287.

"Every creditor must be presumed to understand the "nature and incidents of *such a body politic*, and to con- "tract with reference to them."

Code 11, 29, 3. *Rempublicam ut pupillam extra ordinem juvari moris est.*

V. Coupons are very like checks. They may be considered as checks drawn in advance and payable on a day certain. If not presented at once, or within a reasonable delay, they become stale and dishonored. They are no longer money, nor do they perform any longer the func-

tions of money. They are then exactly like the notes and bills of a suspended bank, first money and then merchandise. The party takes them at his peril, when over due. The lapse of time is notice to all the world. Suppose that on December 1, 1867, the plaintiff had received city checks for these bonds and coupons for the same dates and amounts, the maturity of some would affect the negotiability of all. This will hardly be denied; and the same doctrine must be applied to bonds and coupons. The holder of overdue bonds and coupons takes them exclusively on the payee's credit. When are they overdue? When not presented for payment promptly.

Texas *vs.* White & Chiles, 7 Wall., p. 700.

These bonds and coupons are nothing more nor less than *accommodation paper of the merchant*, issued by the city in aid of the railroad, and, as we contend, overdue and dishonored. If this be true, Mehaffey has not *bought* the bonds and coupons at all; but has *paid* the city's obligations, as its *negotiorum gestor*. He can only claim from the city the amount he has actually paid, with interest from date.

Under the facts in evidence, these are the true legal relations between the city and Mehaffey, from the point of view most favorable to his interests.

VI. In the light of the foregoing principles of law, and especially of the pupilary character of municipal corporations and the negotiable form of these bonds and coupons, the seventh assignment of error is that the bonds and coupons were not issued under full and lawful authority. Upon referring to section 12 of the act chartering the railroad, the authority is found for subscription to the capital stock * * * "and to issue *bonds bear-*

" *ing interest*, or otherwise pledge *the faith* of said city to " pay for the same." The bonds in suit are not " bonds " bearing interest." They are coupon-bonds, composed of coupons and bonds, distinct entities in law, and not authorized by the statute; besides this, they are *negotiable*; and the statute does not and could not authorize *the issue of negotiable securities passing as money*. (Bank vs. Wister, 2 Peters, 326.) To clinch the argument, the authority is expressly confined to a pledge of the FAITH of the said city to pay for the same. The issuance of bonds and coupons is pledging the *credit*, as well as the *faith* of the city. What CREDIT? The *commercial* credit of the city. This could not be pledged by any exercise of legislative power, for *commercial credit* can never be legally predicated as an attribute of a municipal corporation. The right to issue coupon-bonds resides only in parties *sui juris*, nations and individuals; not in minors, married women, lunatics, or municipal corporations. No legislature could authorize a minor to borrow money; still less, to subscribe for shares in a railroad; still less, without expressly changing the *status* of the minor, authorize him to issue negotiable notes or coupon-bonds. Such legislative encroachments on the judicial department would be simply void. The legislature may charter a bank, but cannot convert a municipal corporation into a bank, to make notes and circulate bills of credit. The United States Constitution absolutely forbids the latter proceeding. A municipal corporation may make the ordinary bonds known to the law, but these are *bills of faith*, and are not *negotiable like bills of credit*. The incorporated bank is always an entity distinct from the State; the municipal incorporation, never. The charter of the bank is an executed contract; the charter of a municipality is in no sense a contract; it is a mere delegation of authority which the legislature

may, at any time, arbitrarily annul. The State may constitutionally charter a bank which can issue bills of credit, notes, certificates, coupon-bonds; in short, make use of any proper instrumentality to distribute wealth, that is, money; but cannot authorize a municipality to issue bills of credit in any form, because the municipality is part of the State, and, as such, liable to all the restrictions imposed upon States by the Constitution.

Therefore, if we admit, for argument only, that the State can legally authorize a municipality to subscribe to stock in a private corporation transacting a strictly commercial business, we deny that the State can at the same time validly authorize the municipality to make the money-tokens, the bills of credit, the coupon-bonds to pay for the shares.

And no intent to do this can be drawn from the language of the statute; but the very reverse. The legislature intended an ordinary money bond on a pledge of faith.

See *In re* Natal Co., L. R., 3, ch. 355.

The distinction is well known. Honesty and uprightness are inexpugnable elements of faith; they are the mere accidents of commercial credit. The legislative authorization is "to pledge the faith of the" city of San Antonio "to pay the" bonds bearing interest. Not only are the bonds accommodation-paper of the merchant, but they are expressly secured by a pledge. All judicial securities must be good and solvent. (R. S., 1000.) What does this standing provision of law-procedure mean, unless honesty be the equivalent of goodness and faith, and solvency of commercial credit?

VII. In the judicial consideration of this case, the act authorizing the city to subscribe by incurring the debt in question, is, in effect, authorizing the city to destroy and

annihilate $120,000 of value; or, in other words, authorizing the "*setting on fire*" and "*burning up*" a portion of the city of San Antonio worth that sum of money. This is the array of organized society against individual property. "Clothing private property with a public interest."

VIII. The last assignment of error involves the authority to issue these bonds, and the first objection is that under the Texas constitution, the act of September 5, 1850, "to incorporate the San Antonio Railway Company," is unconstitutional and violative of Art. 7, sec. 24, (Paschal's An. Dig., pp. 67, 942), which reads: "Every law enacted by "the legislature shall embrace but one object, and that "shall be expressed in the title."

Here we have a restraint on legislation of the plainest character—a power withheld by the people from their legislators, and entitled at the hands of the judiciary departments to a wise and reasonable interpretation. Both State and national judiciaries, in their separate and peculiar spheres, must pass on their own responsibility on this question, whenever legitimately raised before them. The same exalted duty which compels this tribunal to say in a proper case that a law of Congress is not the law of the land calls upon it to pronounce in a like manner on any act of a State legislature passed in violation of the State constitution. Nor can this duty be relegated to the supreme courts of the States, for they may decide both ways at different times in similar cases; and even the State litigant must at last, as in this instance, appeal to your Honors as final arbiter. Here the *stare decisis* rule cannot be made to apply, for the decisions of the State courts cancel each other. And, after all, any decided case, no matter of what court or of what country, whilst admittedly conclusive between the parties, is of little or no weight, even as an argu-

ment, unless it harmonizes with that which is the *fons et origo* of all law—the common conscience of the people. A decided case in conflict with *that* is worthless, no matter whether at law or in equity, a probate, admiralty, or prize proceeding, *in personam* or *in rem*.

This position seems to have been assumed as undoubted law. The decisions of the Texas supreme court being contradictory and self-destructive, the lower judge declares: "We feel, therefore, at liberty to follow either one of these "decisions as shall seem to our judgment most sound." And he then continues: "The question in controversy is "not free from doubt, and because it is not free from doubt "we feel it to be our duty to follow the first adjudication, and "hold the section to be constitutional. We are also of "opinion that the weight of argument is with the court "which sustained the section." And with this treatment of the question the point is summarily disposed of.

The same liberty of judgment claimed by the lower judge, and the same right to pronounce upon the relative weight of the arguments in the Texas supreme court decisions, undoubtedly vest in your Honors, and cannot be concluded by *his* action. The question cannot thus be reduced to a question of free will or weight of argument; neither can be a sufficient basis for a judicial decree. For if we admit that the legislature can authorize its own creation, a municipality, to subscribe for shares in a private commercial corporation, the question still remains: Has such legislation been clothed in constitutional forms? For, if not, the particular legislation is void.

The command of the Constitution is twofold. No legislative act shall embrace more than one object, or be valid unless this one object be expressed in its title. The object of this act is chartering the railway, and this object alone is expressed in the title. But the object of the pernicious

twelfth section, as construed by the court below, is to build the railway on the *credit* of the municipality. In other words, authorize the municipality to tax the property of its inhabitants to pay for interest and principal of bonds issued to pay for shares of stock in the railway company, upon a vote of the duly-qualified voters. This object is very far removed from the mere incorporation of a railroad. The essence of an act to incorporate a railroad company is to change the *commercial* responsibility of the men *sui juris* engaged in conducting the business of the road into the corporate liability of the juridical being brought into existence by the act itself. This is the very reverse object of the twelfth section, which changes the liability of the juridical being, the city, into a *commercial responsibility*, with a *pledge* of the entire *property* of the municipality for its payment. Without the act the persons conducting the railroad are partners, and bound *in solido*. With the act they have the same right to carry passengers, *etc.*, as they had when partners, with the addition of certain facilities for the use of the right. But it seems to us tolerably plain that authorizing San Antonio to subscribe for $50,000 of shares, and pay for the subscription in bonds of the city, on a vote of the qualified voters, are objects entirely independent of and unconnected with this changed liability in the once commercial partnership, now a commercial corporation for carrying passengers and freight.

No charter of any kind could legally authorize persons, *alieni juris*, to subscribe in the mode sanctioned by the lower court, even if the Texas constitution had no 24th section. *The question would be a judicial one.* But if this were not so, the intermixture of the two classes of persons in one law would be manifestly giving to the act *two different objects*, which, if not embraced in its title, would make the law void. Searching under legislative

acts chartering railroads for the rights and duties of those without any capacity to act, seems somewhat unreasonable.

Subscriptions, shares, bonds, coupons, votes of qualified voters of municipalities, are no essentials of a corporation. But it must be born of its corporators, and named and baptized by the legislature. San Antonio is not named in the first section of the act. Could the city be inserted among the named corporators without changing the object of the act? That is, could San Antonio, a municipal corporation, be incorporated, "enacted and established a body corpo- "rate and politic under the name of the San Antonio and "Mexican Gulf Railroad" without a special act for that very purpose? This leads to indefinite confusion, if we adopt the affirmative of the proposition.

We are in the presence of a universal admission by the highest courts of most of the States that this system of building railroads is impolitic, dangerous, and immoral. See the authorities. This should, *per se*, favor the application of the constitutional restriction. Where this system of legislation is upheld the acts chartering the railroads and acts authorizing the subscriptions have been separate acts.

Sharpless *vs.* Philadelphia, 21 Penna, 147, 150, 162.

The other points of objection lettered *c* and *d* in the assignment may be submitted together on the proofs in the case. We have already adverted to the too narrow basis upon which the doctrine of *stare decisis* now rests. This is particularly the case in regard to bonds and coupons issued to railroads by counties, cities, towns, villages throughout the country. There never has been invented, in any age of the world, legislation like this, judicially admitted to be violative of "all principles of moral justice

and propriety." Judicial anathemas from Justice Patterson, in 2 Dallas, p. 316, down to the present day, in all courts, State and national, have been hurled at it in vain, until this honorable Court, backed by public opinion and conscience, disregarding the authority of the decided cases, "the modern instances and wise saws" of the poet, because, contrary to reason, wisely began the work of judicial reform of legislative abuse. This is a very plain case for the continuance and extension of the doctrines enunciated by the jurists that led the court in the case of Mayor *vs.* Ray, (19 Wall., 468,) and achieved a great triumph in obtaining the reversal of the judgment. We venture to say that no case since Knox *vs.* Lee has equalled this in importance. It touches most nearly the institution of property and the communising tendencies of legislation. It keeps the municipalities steadfast in their appropriate spheres of action; it determines, but it enlarges not their powers; it distinguishes obligations made by them from those made by merchants; it distinguishes the rules regulating merchants and commercial persons and corporations from the rules regulating the forms of commercial transactions. With a profound knowledge of political economy and a nice discrimination of the ambiguity latent in the word "CREDIT," with a firm hand it holds the reins of the chariot of progress, and retains it in its proper path. Judicial sophistry, like that exhibited in the majority-opinion in the Williamsport bond cases, only serves to bring out into the light of day the principle, the reason, the wisdom and justice of the decision.

Admitting *a. g.*, that a majority of the qualified voters voted for the subscription to the railroad, (which may be asserted as contrary to truth,) then arises the question, whether the subsequent legislation was not radically so

fraulty as to relieve the city from her obligations towards any subsequent holder in like position with Mehaffey?

We deny the right of the legislature, either directly to authorize a municipality to subscribe for shares in a railroad company, or indirectly, by a vote of the majority of qualified electors. But assuming as true that this legislative power exists, and, in the extremely vague language of the supreme court of Pennsylvania, that this reference to a vote "DID NO HARM," then we urge that no subsequent legislative act of the State of Texas could modify, change, and impair the obligation of the contract between the city and the railroad company without absolving the city from her liability as a subscriber for shares, unless the act were passed with the assent of the city, manifested by a similar vote of her qualified citizens.

See the Acts, pp. 70, 71, 72, 73, 74.

Here these subsequent acts entirely changed the legal relations between the State and the railroad, exempting the latter from a forfeiture incurred, extending the time for building the road and providing for a new forfeiture by January 1, 1860, and even extending this term till January, 1863. It is very true all this legislation was in aid of the railroad company; but, at the same time, if the judgment herein is to be affirmed, inflicted a vast injury upon the city of San Antonio. Of all these acts Mehaffey was bound to take notice.

It also appears from the record, (p. 47,) that the railroad proposed to cancel the subscription of the city, January, 1855; and withdrew the same, apparently, about December, 1857. This shows that up to this time the city bonds were still in the hands of the railroad company; and their subsequent negotiation at any price, or for any purpose, liable to serious imputations of fraud.

IX. The calculation by which the judgment in this suit has been reached is set forth on page 9 supra.

We again contend that no interest is due on the coupons. If the principle acted on by the lower court were to be applied to the United States or any State of this Union, and compound interest be declared to accrue on coupons at the will of the creditor who chooses to hold the coupons rather than present them for payment at maturity, the falsity would be apparent. "There is no fresh contract evidenced "by the forbearance of the creditors, or in any other way, "for the payment of any further interest."

In re European Central R.R. Co., L. R. 4, C. D. 37.

But the coupons have no date to them. The word is "due," without any date annexed. When due? The interest is declared "due 1st March, 1867," *etc.* The coupon *may* have been given long after the maturity of the interest, for aught that appears on the face of the paper. Besides, as the present holders were during the war residents in loyal parts of the country, no interest ran against the city for that time at least, beginning April 27, 1861, and ending August 20, 1866.

The Protector, 12 Wall., 700.
Burke *vs.* Miltenberger, 19 Wall., 525.
Brown *vs.* Hiatt, 15 Wall., 177.

The affirmance of the judgment will put the foreign creditor upon a much better footing than the domestic creditor. The latter could enforce no liability in the Texas courts against the defendant, city, on these bonds and coupons *payable to bearer*. Only transfer them to a Virginian and a New Yorker, and the creditor stands, not on *the same footing* as the domestic creditor, as provided by interna-

tional law, but accoutred, in addition, with all the armor, offensive and defensive, of the national judiciary.

Clark ve. City, 1 Bissell, 101.

If your Honors authoritatively declare the law of commerce to the States, we know not by what process of mentation municipal corporations, mere instruments of the States and of their legislative powers, can be brought within this law. It is actually the subordination of all State law to commercial law; and by a vast extension, vesting full control in your Honors of the societary movement. This extended jurisdiction has not yet been conferred by Congress upon the federal courts, even if it were contemplated by the Constitution. Even in the act of March 3, 1875, (18 S. L., 470,) to determine the jurisdiction of the circuit court, and which is an enlarging act, the mandate is that no such court shall have cognizance of of any suit founded on contract in favor of an assignee * * * "except in cases of promissory notes *negotiable by* "*the law-merchant* and bills of exchange." Coupon bonds are not such promissory notes when made and issued by a municipal corporation. "The expression," *lex mercatoria*, "has frequently led merchants to suppose "that ALL THEIR NEW FASHIONS AND DEVICES (*instar om-* "*nium*, COUPON BONDS) immediately become the law of the "land, a notion which, perhaps, has been too much en- "couraged by the courts. Merchants ought to take their "law from the courts, and not the courts from the mer- "chants."

1 Coke Institutes, p. 9, Note B.

Lastly, the action on some of the coupons is prescribed, (barred by the statute of limitations in two or four years.)

Paschal's An. Dig., art. 4604, p. 758.
Clark *ve.* Iowa City, 20 Wall., 583.

This brief is likewise intended to apply to the brief filed in the case of City of San Antonio [illegible] Barnes, No. 245, both cases having been [illegible] together by the lower court, and both depending on the same facts and legal principles.

Respectfully submitted.

DURANT & HORNOR,
EDMUND J. DAVIS,
Of Counsel.

WASHINGTON, D. C., *January* 28, 1873.

Supreme Court of the United States.

No. 244.

CITY OF SAN ANTONIO,
Plaintiff in Error,

vs.

THOMAS J. MEHAFFEY,
Defendant in Error.

In Error to the Circuit Court of the United States, for the Western District of Texas.

Brief and Argument of Defendant in Error.

T. A. LAMBERT,
Of Counsel for Defendant in Error.

Judd & Detweiler, Prs.

Supreme Court of the United States.

No. 244.

CITY OF SAN ANTONIO,
Plaintiff in Error,

vs.

THOMAS J. MEHAFFEY,
Defendant in Error.

In Error to the Circuit Court of the United States, for the Western District of Texas.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

The case was tried below by the court, a jury having been waived, (Record p. 22.) The evidence adduced appears in the statement of facts commencing at page 31 of the record. The court's finding thereon is exhibited with sufficient clearness in the concurrent opinion of Judges Woods and Duvall, who sat in the trial of the action, (Record pp. 23–8.) The correctness of this finding is in all respects sustained by the statement before mentioned, and should, it is submitted, be held to be conclusive of all questions of fact in the case upon the present hearing. The briefs, however, which have been submitted in behalf of the plaintiff in error, deal for the most part in energetic discussion of those facts, and thereby render a passing reference to them on the part of the defendant in error, at least, pardonable.

When regard is had to the meagre proof adduced by the plaintiff in error to sustain its voluminous and fragmentary pleading, one cannot refrain from observing the almost ludicrous contrast presented by the magnificence of the proffer, and sterility of the result. *Parturient montes, nascetur ridiculus mus.*

To a very modest declaration is interposed, 1, What purports to be a plea in abatement; 2, a demurrer, consisting of ten propositions; and 3, an answer which, providently, embraces all that precedes it. Thereafter follow in quick succession, 4, a plea of *non est factum;* and 5, an amended answer, which is succeeded, 6, by a further answer, the whole being supplemented, 7, by yet another amended answer, embracing what might be termed, in analogy to legislation, a repealing clause as to antecedent conflicting averments. (Record, pp. 8–11.)

By the original and amended petition it appears that the two bonds and forty coupons sued upon, were purchased in good faith, by the defendant in error, a citizen of the State of Virginia, in due course of trade and before maturity. The latter fact becomes manifest from an inspection of the bonds which did not become due and payable until the 1st day of March, 1872, and of the coupons, the earliest of which was payable as late as September 1st, 1860. By the amended petition it appears, also, that the issuance of said bonds was authorized by an act of the Legislature of the State of Texas entitled "An act to incorporate the San Antonio and Mexican Gulf Railroad," approved September 5th, A. D. 1850.

The issues sought to be raised by the somewhat variable pleadings on the part of defendant in error, would seem to be:

1. As to the jurisdiction of the circuit court.

2. As to the existence and due execution of the instruments of writing sued upon.

3. As to the *bona fides* of their inception.

4. As to the sufficiency of the consideration whereon they were founded.

5. As to the regularity of their issue.

6. As to the legislative power to authorize their issuance.

7. As to the constitutional exercise of this power, as exhibited by construing the 12th section of the act of September 5th, A. D. 1850, in the light of the 24th section of article seven of the constitution of Texas.

In view of the averments of the original and amended petition, it will not be denied that the task of showing—1, want of jurisdiction; 2, non-execution of the instruments sued upon; 3, fraud or *mala fides* in their inception; 4, absence of legislative power; and 5, unconstitutionality of the attempt to exercise it—devolved upon the plaintiff in error.

As to the fourth and fifth of the foregoing issues it is sufficient to observe that the instruments of writing sued upon, being impressed with the attributes of commercial paper, it cannot be material, under the circumstances of the case, to inquire whether a consideration existed originally or not, or whether the forms prescribed for their emission were in fact in all respects observed.

Mercer Co. *vs.* Hackett, 1 Wall., 83.
City of Lexington *vs.* Butler, 14 Wall., 283.
County Commissioners *vs.* Clark, 4 Otto, 278.
Knapp *vs.* Mayor, etc., of Hoboken, 10 Vroom.
Flagg *vs.* City of Palmyra, 33 Mo., 440.
Van Harthrup *vs.* Madison City, 2 Black, 722.
Moran *vs.* Commissioners of Miami County, 2 Black.
Stephenson *vs.* Schenck, 5 Wall., 784.
Swift *vs.* Tyler, 6 Pet., 1.

Goodman *vs.* Simonds, 20 Howard, 343.
1 Dillon Mun. Corp., sec. 405 and notes.

The existence of a sufficient consideration (in stock of San Antonio and Mexican Gulf Railroad Company, subscribed for by the plaintiff in error,) is proven by its own witnesses. (See testimony of Thomas J. Devine, Record, pp. 65–6; James R. Sweet, p. 60; John James, p. 62; Samuel C. Smith, p. 65.) The irregularity mainly relied upon in pleading is the alleged want of sufficient notice of election. Were this open to inquiry, it would be found that, by the testimony of Nath'l Lewis, the most prejudiced, apparently, of the city's witnesses, the notice appeared on the 12th of an election to take place on the 31st of December. Including both days, (and there is no evidence of a rule by which either should be excluded,) the requirement of twenty days' notice was manifestly complied with. The witness Devine, in fact, says: "The proper notice was, I believe, given, and the usual mode for giving information carried out or followed." Apart, however, from the operation of the principle which secures to the *bona fide* holder of immature negotiable paper, immunity from the consequences of irregularity in its issue, the doctrine of estoppel might, if occasion demanded, be invoked in aid of the defendant in error. For it seems, from the testimony, that the city of San Antonio not only subscribed in the most formal manner for the stock, and authorized its mayor to issue bonds therefor, but it provided for the *levy of a tax* to meet the interest thereon arising, (Record, p. 46,) and actually *paid such interest* to the treasurer of the railroad company. (*Ib.*, p. 64.)

Supervisors *vs.* Schenck, 5 Wall., 297.
Pendleton *vs.* Amy, 13 Ib., 297.*

For the same purpose attention might properly be called to the recital in the bond, that "*This debt is authorized by a*

* Knox v. Lee, 12 Wall. 539
Chicot v. Lamoignon 15 Wall. 535

vote of the electors of the City of San Antonio, taken in accordance with the provisions of an 'Act to incorporate the San Antonio and Mexican Gulf Railroad Co., approved September 5th, A. D. 1850.'"

Moran *vs.* Miami Co., 2 Black, 722.
Knox *vs.* Aspinwall, 21 Howard, 539.*

The objection of want of jurisdiction in the former court is not insisted upon in the brief originally filed for plaintiff in error, but finds expression in the additional brief. It proceeds apparently upon the theory (in opposition to all modern authority) that the bonds and coupons sued upon are not negotiable instruments, and, therefore, that they invest the assignee with no right of action in his own behalf. It is not easy to treat this objection with the seriousness which unfeigned respect for its authors would dictate. That the instruments are, in fact, choses in action, is to say that they bear a legal impress common alike to all other forms of negotiable paper. And it will not be denied that the indorsee of a promissory note, who is a citizen of a State different from that of the maker whom he sues, may invoke the jurisdiction of the Federal courts.

The issue raised by the plea of *non est factum* was decided below in favor of the defendant in error. The plea is reasserted, however, in the adverse briefs. So far as it proceeds upon the assumption that the mayor, acting alone, was incompetent to execute the bonds, it may be sufficient to refer to the authorization by the city in its resolution or ordinance of April 26th, A. D. 1852, exhibited at page 46 of the record, and to the absence, in the act of September 5th, 1850, of any prescription as to the forms which should attend such execution. The absence of a seal, however, is the objection mainly urged under this issue. In addition to the general principle of estoppel adverted to in the opinion of the court below, which, in itself, is a complete

* Mercer C. v. Watkins 1 Wall. 83
Corbin v. Cowen 2 Otto 484
Nevins v. Peabody 96 484
Conover v. Ins. Co. 96 509
Co. of Pontotoc v. Bk. Bank 96 601
Robinson v. Bk. Bank 18 Ga. 65

answer to the objection, it may not be improper to advert to the existing doctrine relative to the necessity for the use of a seal in the execution of corporate contracts. This may seem to be all the more pertinent from the fact that the supreme court of Texas, in deciding the analogous case of San Antonio *vs.* Gould, laid great stress upon the absence of a seal from the instruments in question.

In passing upon the validity of an unsealed contract made by the city of Dubuque, the court in Fanning *vs.* Gregoin, (16 How., 533,) while recognizing the old rule to have been that a corporation could not contract, except under its seal, say: "That doctrine has long since been overruled and it is now fully established that the agents of a corporation may bind it by parol."

The appointment of an agent may be made by a mere vote or other corporate act not under seal, whose acts and contracts within the scope of his authority, would be binding on the corporation.

3 P. Wms., 419.*

Courts of equity, in that respect seeming to follow the law, will enforce the unsealed contracts of a corporation.

1 Fonbl., 296.

Vide Bank of Columbia *vs.* Patterson's Admr., 7 Cr., 305.

Flecknor *vs.* Bank of the U. S., 8 Wh., 358.

In Bank of Kentucky *vs.* Wister, 2 Pet., 324, the court says:

"It is insisted that in Kentucky a corporation can only assume under seal, whereas the assumpsit here laid is general and without seal. On this subject the counsel admitted that every court in the United States had decided otherwise."

Modern decisions have established the law to be that contracts of municipal corporations need not be under seal un-

* Allen, Lyman v. Ste Croix 16 Wall. 13
McKee v. Pierson Co. 3 Dill. 212

less the charter so requires. The authorized body of a municipal corporation may bind it by an ordnance which in favor of private persons interested therein, may, if so intended, operate as a contract; or they may bind it by a resolution, or by vote, clothe its officers, agents, or committees, with power to act for it; and a contract made by persons thus appointed by the corporation, though by parole, (unless it be one which the law requires to be in writing,) will bind it.

1 Dillon Mun. Corp., sec. 374, and authorities cited.*

8. It is suggested in the pleadings and insisted to some extent in the original brief of the plaintiff in error, that the securities sued on were vitiated by the alleged fraud of the railroad company. Had this averment been proved, it would not, it is submitted, have defeated the right of defendant in error to recover.

Mercer Co. *vs.* Hackett, 1 Wall., 93.

Is the charge however, sustained? Nath. Lewis, whose testimony betrays a feeling of bitter hostility to the company and who admits his early opposition to it, says: "I do not believe there ever was any honesty in the concern," but he adduces no facts in support of his belief. On the contrary Judge Devine, of whom the adverse brief makes respectful mention, declares emphatically, at p. 57 of the Record, that both the city and the company acted in good faith—that the subscription was fairly and honestly made, and the bonds fairly and honestly executed and delivered by the Mayor. To the same effect is the evidence of Jas. R. Sweet, at p. 60. So also Samuel S. Smith at p. 65, and James R. Sweet again at page 69.

The very fact (if it be a fact) upon which the plaintiff in error lays stress, for another purpose, that the bonds remained in possession of the railroad until about the year A. D., 1859, besides exhibiting acquiescence by the city,

* Co. of Mobile v. The Bank, supra

in the terms and fruits of its contract is very conclusive of the absence of any sentiment that the company had acted in bad faith when it exchanged its stock for the city bonds.

The testimony exhibits no fact or state of facts more clearly than that the ill success of the railroad enterprise was due in a large degree to the efforts of the individual members of the city corporation to thwart all attempts at a favorable negotiation of its bonds. The city of San Antonio, and the county of Bexar were the largest stockholders, and the sale of these bonds in a favorable market must have gone far towards building the road. (Devine's testimony, page 56.) But the attempt was frustrated by the efforts of some of the very witnesses now introduced to sustain the city's attempt at repudiation, (Devine, pp. 55 and 56, and John James, page 61.)

Having entered with deliberation into a solemn engagement, is the city to be permitted, now, to take advantage of a state of things superinduced by its own wrong to escape the resulting burthen?

4. The competency of the Legislature to authorize the subscription by the city of San Antonio to the stock of the railroad company, and to issue its bonds in payment thereof, is not now an open question, although insisted upon with zeal in the additional brief. It is the established law of Texas, since the decision of San Antonio *vs.* Jones, in 28 Tex., page 19, and the power has been too often recognized by this court to warrant the citation of authority in its support. Whatever may be the individual variance of opinion among judges as to its policy, the law has been repeatedly declared to be in favor of such power when not expressly inhibited by the constitution, and the current of authorities is too strong to be successfully stemmed.

Harcourt *vs.* Good, 39 Tex., 455.

Vide Walker *vs.* Cincinnati, 11 Am. L. R., (n. s.,)

346, for an elaborate review of cases, State and Federal.

Cooley's Cons. L., 119, note 4.

5. The paramount issue raised by the pleadings, and the most material assignment of error, is that which relates to the constitutionality of the 12th section of the act incorporating the San Antonio and Mexican Gulf Railroad.

Section 24, art. 7, of the constitution of Texas, 1845, provided: "Every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title."

The title of the act in question is: "An act to incorporate the San Antonio Railroad Company."

Between the provisions of the 12th section, which provides for municipal subscription to the company's stock, and the title, a variance fatal to the constitutionality of the former is claimed, by plaintiff in error, to exist.

The privilege accorded, by this section, to the railroad, was recognized, and the authority to subscribe to its stock was availed of by the corporate authorities of San Antonio, and no question appears to have been made of its validity, in the courts, from the date of its passage, in 1850, until 1866. In the latter year the case of San Antonio *vs.* Jones, 28 Tex., 19, gave occasion for judicial affirmance of its constitutionality in that feature, at least, which awards to municipalities authority to subscribe for stock.

The decision of San Antonio *vs.* Lane, 32 Texas, 405, in 1869, was made by a full and unanimous court. The issue then presented was identical with the one under consideration. The opinion delivered by Judge Caldwell, disposes in a few clear and effective sentences, of the narrow and impracticable bounds within which it was sought, by the corporation counsel, to restrict contemplation of the constitutional provision.

In 1871, the court being composed of entirely new judges, the case of San Antonio *vs.* Gould, 34 Texas, 49, was tried and decided. The 12th section of the act was declared unconstitutional, as providing for an object not embraced in its title. From the general and somewhat vague manner in which this point is treated, and the great weight evidently attached by Justice Walker, who rendered the opinion, to the absence of a corporate seal from the city bonds, it is fair to argue that the court reached its determination upon the constitutional question with doubt and hesitation.

In the last case of Gittings *vs.* San Antonio, tried in 1877, and reported 47 Texas, 548, the court, in following the last preceding adjudication upon this point, make no concealment of the difficulty under which they labored in reaching this determination:

"It is not pretended that the question presented in this case is free from difficulty in its determination. The same question, upon the same class of claims, has twice been decided by this Court; first, in favor of, and next against the constitutionality of this twelfth section of the act of incorporation—the Court being composed of different members in the last case, from those who decided the first case. This suit, it would seem, from the date of its commencement, was brought to take the opinion again of this court, when composed of still another set of judges, and the case looks to a reversal of the last decision of the Court made in it."

Ibidem.

The right of the defendant in error became vested long prior to this latest of the oscillations of the supreme court of Texas, and, although before the decision of Lane *vs.* San Antonio, nevertheless, at a time when the contract was believed to be valid by the legislative and executive departments of city and State, and, as such, had been uniformly acted upon.

The rule by which this court permits itself to be governed,

under these circumstances, is too well established to warrant recital. It is fully enunciated in—

Ohio Life Co. *vs.* Debolt, 16 How., 432.

Gelpke *vs.* Dubuque, 1 Wall., 206.*

It may be instructive to remark that the latest of the foregoing decisions of the State tribunal was made by two of the judges only. Moore, J., who sustained the constitutionality of the act of incorporation in 1866, did not sit in the case.

The adjucation of this point, therefore, cannot in any sense, be regarded as settled.

The point is one that, by reason of its subservience to local political issues, exposes the State tribunal, in a peculiar manner, to the operation of partizan appeal, and individual passion; *ex. gr.*, see argument of City Counsel in San Antonio *vs.* Gould, 34 Texas, 50. It is evident, moreover, that the supreme court of Texas, in deciding adversely to the constitutionality of the section in question, in face of the doubts to which it felt itself impelled to give expression, violated one of the most approved canons of constitutional interpretation.

Cooley's Cons. L., *54.

The reasoning of courts should tend rather to affirm than to deny the constitutionalty of legislative enactment.

Ibidem.

People *vs.* Mahany, 13 Mich., 495.†

Nothing would seem to be better established on principle and authority than that the question presented by the issue under consideration is open to the determination of this Court.

Reference has already been made to the contemporaneous practical construction of the Act of Incorporation.

* Calvert v. Lafourche 16 La. Ann. 91
Shreveport v. Shaw 8 La. Ann. 385
† San Antonio v. Phillips 27 Tex. 291

and especially of its 12th section, furnished by the action upon and recognition of it by the legislative and executive officers of the State and city. This, it is submitted, in view of the rights which have become vested on the strength of that construction, should be allowed no little weight in determining the point.

Cooley's Cons. L., *67, 69, 70.

The conditional grant of authority to the city of San Antonio to subscribe for railroad stock, like the power to borrow money, *was no enlargement of its municipal franchise. Quoad hoc, it was a private corporation. Such a power is entirely distinct, in contemplation of law, from those which are bestowed upon the city for public purposes, only, and pertain to its functions as a local government, exercising, for that purpose, a portion of the sovereign power of the State.*

De Voss *vs.* City of Richmond, 7 Am. L. R., (n. s.,) 591.

Moodaly *vs.* East India Co., 1 Brown C. C., 469.

It was by failing to observe this distinction (than which none ought to be clearer) that the State court, in Gittings *vs.* San Antonio was misled, as is apparent from the main reason advanced for its decision.

The OBJECT of the act being to incorporate the railroad company, it was certainly competent to include therein, without special reference in the title, provision for the issuance of stock; the persons, corporate and natural, to whom it should issue; and the manner in which they should subscribe.

Supervisors *vs.* The People, 25 Ill., 181.*

If, as we have seen, the city, *quoad this authority*, was but a private corporation, why should the insertion of its name in the list of contemplated stockholders necessitate a sepa-

* Ala., Yaselli v. Echols 20 Fed. 792

rate caption or a new act? No new power of local municipal government was thereby conferred; but, simply, the right to become, if it chose, a stockholder in another corporation, which, in this respect, maintained an equal footing with itself.

If, in construing the act by the constitutional mandate, we are to denude it of every provision save that which speaks directly to its creation, then must it be shorn of every attribute that could render its creation desirable. Such narrow and baneful construction, applied to the creation of the world, would obliterate every necessary and beneficent consequence of the sunshine, because not included in the sublime formula of the omnipotent source of law—"Let there be light."

To hold, as was done in San Antonio *vs.* Gould, that because an act of incorporation could have been framed without the clause in question, the insertion of that clause was obnoxious to constitutional objection, is to assume what never could have been contemplated by the framers of the State constitution, viz: That, in the selection of the means and the framing of details whereby its objects should be attained, the Legislature was to be deprived of all exercise of judgment. The necessary result of any such view, if practically enforced, would be the creation of titles co-extensive in bulk with the acts they serve to index, or a bewildering mass of fragmentary and ever increasing legislative enactments.

Cooley's Cons. L., *144.

The generality of a title is, therefore, no objection to it, so long as it is not made a cover to legislation incongruous in itself, and which by *no fair intendment* can be considered as having a necessary or proper connection. The Legislature must determine for itself how broad and comprehensive shall be the object of a statute, and how much

and especially of its 12th section, furnished by the action upon and recognition of it by the legislative and executive officers of the State and city. This, it is submitted, in view of the rights which have become vested on the strength of that construction, should be allowed no little weight in determining the point.

Cooley's Cons. L., *67, 69, 70.

The conditional grant of authority to the city of San Antonio to subscribe for railroad stock, like the power to borrow money, *was no enlargement of its municipal franchise. Quoad hoc, it was a private corporation. Such a power is entirely distinct, in contemplation of law, from those which are bestowed upon the city for public purposes, only, and pertain to its functions as a local government, exercising, for that purpose, a portion of the sovereign power of the State.*

De Voss *vs.* City of Richmond, 7 Am. L. R., (n. s.,) 591.

Moodaly *vs.* East India Co., 1 Brown C. C., 469.

It was by failing to observe this distinction (than which none ought to be clearer) that the State court, in Gittings *vs.* San Antonio was misled, as is apparent from the main reason advanced for its decision.

The OBJECT of the act being to incorporate the railroad company, it was certainly competent to include therein, without special reference in the title, provision for the issuance of stock; the persons, corporate and natural, to whom it should issue; and the manner in which they should subscribe.

Supervisors *vs.* The People, 25 Ill., 181.

If, as we have seen, the city, *quoad this authority*, was but a private corporation, why should the insertion of its name in the list of contemplated stockholders necessitate a sepa-

rate caption or a new act? No new power of local municipal government was thereby conferred; but, simply, the right to become, if it chose, a stockholder in another corporation, which, in this respect, maintained an equal footing with itself.

If, in construing the act by the constitutional mandate, we are to denude it of every provision save that which speaks directly to its creation, then must it be shorn of every attribute that could render its creation desirable. Such narrow and baneful construction, applied to the creation of the world, would obliterate every necessary and beneficent consequence of the sunshine, because not included in the sublime formula of the omnipotent source of law—"Let there be light."

To hold, as was done in San Antonio *vs.* Gould, that because an act of incorporation could have been framed without the clause in question, the insertion of that clause was obnoxious to constitutional objection, is to assume what never could have been contemplated by the framers of the State constitution, viz: That, in the selection of the means and the framing of details whereby its objects should be attained, the Legislature was to be deprived of all exercise of judgment. The necessary result of any such view, if practically enforced, would be the creation of titles co-extensive in bulk with the acts they serve to index, or a bewildering mass of fragmentary and ever increasing legislative enactments.

Cooley's Cons. L., *144.

The generality of a title is, therefore, no objection to it, so long as it is not made a cover to legislation incongruous in itself, and which by *no fair intendment* can be considered as having a necessary or proper connection. The Legislature must determine for itself how broad and comprehensive shall be the object of a statute, and how much

particularity shall be employed in the title in defining it. (Ib.)

The two decisions last noted of the supreme court of Texas, occupy an isolated position. The uniformity with which similar clauses in acts of incorporation, under like constitutional provisions, have been upheld by the courts, has occasioned their citation in text books and judicial opinions, as illustrative of the recognized and legitimate scope to be accorded such legislation.

Cooley's Con. L., *146.

Supervisors *vs.* People, 25 Ill., 181.

Reynolds *vs.* Smallhouse, 11 Am. L. R., (n. s.,) 164.

Louisville & Oldham Turnpike Company *vs.* Ballard, 2 Met., 168.

"Such powers as are delegated by this act, are given in most instances to all corporations created for the purpose of internal improvement. The right of turnpike companies to charge tolls, to purchase land for toll houses; *to railroad companies to purchase land for depots; to submit questions of taxation to the votes of the people; to enable them to build roads, to sell bonds and mortgage their road in aid of its construction.* All the rights and powers given this corporation have reference to the subject-matter of the act, and to decide the present act unconstitutional upon the ground that it is in violation of the thirty-seventh section of article 2 of the constitution, would be, in effect, annulling nearly all charters heretofore granted by the legislature for internal improvement purposes."

Reynolds *vs.* Smallhouse, *supra.*

Phillips *vs* The Bridge Company, 2 Met., 222.

Qui hæret in litera hæret in cortice.

Finally, it is to be remembered that a corporation, quite as much as an individual, is held to a careful adherence to truth in its dealings with mankind, and cannot, by its rep-

resentation or silence, involve others in onerous engagements, and thus defeat the calculations and claims its own conduct has superinduced.

Zabriskie *vs.* C. C. & C. P. R. R. Co., 23 How., 381.
Bissell *vs.* City of Jeffersonville, 24 Ib., 287.

It is respectfully submitted that the writ of error in this case should be dismissed.

T. A. LAMBERT,
Of Counsel for Defendant in Error.

Addenda

Both the facts & analogies on the principles enunciated in The Angora v. Ry 19 Wall. 477, would seem to justify analogy & exhibit application to the present case.

The objection (Assignments of Error 8 & 9 & 10) that Plaintiff in Error was released from liability by failure of the Company to build its road within the time limited by charter is disposed of by the Court in John Antonio B. Jones 28 Tex. 32-3-4 cases by the Court below - Record pp. 25-6

As to 9th Error Assignment Statute Remands a Corpus, in a mortgaged Town, Clause with after payment has been refunded in